TEXAS REGISTER

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Diego Rodriguez

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/opinopen/opengovt.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.state.tx.us/

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for October 23, 2009

Appointed as Chief Justice of the Fifth District Court of Appeals, effective October 31, 2009, for a term until the next General Election and until her successor shall be duly elected and qualified, Carolyn Wright of Heath. Justice Wright is replacing Chief Justice Linda Thomas who resigned.

Appointed as Judge of the 198th Judicial District Court, Kerr, Kimble, Mason, McCulloch, and Menard Counties for a term until the next General Election and until his successor shall be duly elected and qualified, Melvin Rex Emerson, Jr. of Kerrville. Mr. Emerson is replacing Judge Prohl who resigned.

Appointed to the On-Site Wastewater Treatment Research Council for a term to expire September 1, 2011, Elaine Anne Boatright of Smithville (replacing Alfred Sulak of Orchard whose term expired).

Appointed to the On-Site Wastewater Treatment Research Council for a term to expire September 1, 2011, Sockalingam Sam Kannappan of Houston (Mr. Kannappan is being reappointed).

Appointed to the On-Site Wastewater Treatment Research Council for a term to expire September 1, 2011, Sarah E. Kirksey of Beaumont (Ms. Kirksey is being reappointed).

Appointed to the On-Site Wastewater Treatment Research Council for a term to expire September 1, 2011, Brian L. Padden of Austin (Mr. Padden is being reappointed).

Appointed to the On-Site Wastewater Treatment Research Council for a term to expire September 1, 2011, Carl M. Russell, Jr. of Lubbock (Mr. Russell is being reappointed).

Appointed to the On-Site Wastewater Treatment Research Council for a term to expire September 1, 2011, William F. "Dubb" Smith, III of Dripping Springs (Mr. Smith is being reappointed).

Designating Wes L. Jurey as presiding officer of the Texas Workforce Investment Council for a term at the pleasure of the Governor. Mr. Jurey is replacing John Sylvester of Houston as presiding officer.

Appointed to the Texas Workforce Investment Council for a term to expire September 1, 2015, Robert L. Cross of Houston (replacing Robert Dement of Houston whose term expired).

Appointed to the Texas Workforce Investment Council for a term to expire September 1, 2015, Richard Giles Hatfield of Austin (Mr. Hatfield is being reappointed).

Appointed to the Texas Workforce Investment Council for a term to expire September 1, 2015, Larry F. Jeffus of Garland (Mr. Jeffus is being reappointed).

Appointed to the Texas Workforce Investment Council for a term to expire September 1, 2015, Matthew T. Maxfield of Brownwood (replacing John Sylvester, Jr. of Houston whose term expired).

Appointed to the Texas Workforce Investment Council for a term to expire September 1, 2015, Joyce D. Taylor of Houston (Ms. Taylor is being reappointed).

Rick Perry, Governor

TRD-200904881

♦ ♦ ♦

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Request for Opinions

RQ-0829-GA

Requestor:

The Honorable Frank Corte Jr.

Chair, Committee on Defense & Veterans' Affairs

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a facility must have a license to perform medical abortions (RQ-0829-GA)

Briefs requested by November 20, 2009

RQ-0830-GA

Requestor:

Jesse W. Rogers, President

Office of the President

Midwestern State University

3410 Taft Boulevard

Wichita Falls, Texas 76308-2099

Re: Applicability of the Texas Public Funds Investment Act, chapter 2256, Government Code, to endowment funds of a state university (RQ-0830-GA)

Briefs requested by November 25, 2009

RQ-0833-GA

Requestor:

The Honorable Jim McReynolds

Chair, Committee on Corrections

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of the Prepaid Higher Education Tuition Board to modify the terms of existing contracts pursuant to article VII, section 19, Texas Constitution, and chapter 54, Education Code (RQ-0833-GA)

Briefs requested by November 6, 2009

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200904877
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: October 27, 2009

♦ ♦ ♦

Opinions

Opinion No. GA-0743

Mr. Bill Segura, Chancellor

Texas State Technical College System

3801 Campus Drive

Waco, Texas 76705

Re: Whether Texas State Technical College (TSTC) can legally enter into a student loan program with a private lender, whereby TSTC and the private lender share the risk of students defaulting on the loans (RQ-0803-GA)

S U M M A R Y

Article III, sections 50 and 51 of the Texas Constitution forbid the granting of public money and the lending of the state's credit solely to an individual, although expenditures which incidentally benefit private entities are permitted if made for a legitimate public purpose. Texas State Technical College's discharge of student loans under the proffered loan proposal would be constitutional only if made for a legitimate public purpose and if adequate controls existed to ensure that the public purpose is met.

Section 54.051 of the Education Code requires the Texas State Technical College board to collect set tuition and fees from students attending the institution. The Legislature has authorized the board to reduce the amount of tuition charged in certain circumstances, but only if specific requirements are met. If Texas State Technical College discounts students' tuition under the proffered loan proposal, it must ensure that it meets these requirements.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200904882

Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: October 28, 2009

♦ ♦ ♦

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 79. BUSINESS ENTITY FILINGS
SUBCHAPTER B. DOCUMENT REVIEW

1 TAC §79.29

The Office of the Secretary of State proposes new 1 TAC §79.29, relating to consent to serve as registered agent. New §79.29 is proposed to implement the requirement in §5.201, Texas Business Organizations Code, that the secretary of state develop the form for written or electronic consent by a registered agent. The proposed rule sets forth the form of consent, as well as information pertaining to filing the consent with the secretary of state.

FISCAL NOTE

Leigh A. Joseph, Attorney in the Business and Public Filings Division, has determined that for each year of the first five years that the section is in effect there will be no fiscal implications to state or local governments as a result of enforcing or administering the rules as proposed.

PUBLIC BENEFIT AND SMALL BUSINESS COST NOTE

Ms. Joseph has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing or administering the sections as proposed will be to view form and filing information provided by the rule. There will be no effect on small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the proposed rule.

COMMENTS

Comments on the proposed new rule may be submitted in writing to: Leigh A. Joseph, Office of the Secretary of State, Corporations Section, P.O. Box 13697, Austin, Texas 78711-3697. Comments must be received not later than 12:00 noon, December 7, 2009.

STATUTORY AUTHORITY

The proposed new rule implements §5.201(b)(A)(ii) and (B)(ii), Texas Business Organizations Code.

No other code or statute is affected by the proposed rule.

§79.29. Consent to Serve as Registered Agent.

(a) Form. Section 5.201(b), Texas Business Organizations Code, requires the secretary of state to develop the form of consent required to be obtained from a person designated or appointed as the registered agent of a represented entity. The consent to serve as the registered agent of a represented entity may be in a written or electronic form. A written or electronic consent to serve as registered agent must contain:

(1) the name of the represented entity;

(2) an express statement of consent to serve as the entity's registered agent;

(3) the name of the registered agent;

(4) the signature of the registered agent; and

(5) the date of execution.

(b) Promulgated Form Not Mandatory. The secretary of state has promulgated a form for this purpose; however, use of such form is not mandatory. See Form 401-A, available at http://www.sos.state.tx.us/corp/forms_boc.shtml.

(c) Retention of Form. Filing a statement of consent to serve as registered agent with the secretary of state is not required; the represented entity should retain the consent of the person designated as registered agent in its own records.

(d) Permissive Filing with Secretary of State. A statement of consent of registered agent will be maintained in the records of the secretary of state when:

(1) the statement is submitted simultaneously with a registered agent filing; or

(2) the statement is submitted separately with the fee specified under subsection (f) of this section.

(e) Indexing a Filed Statement of Consent. A statement of consent that is submitted simultaneously with a registered agent filing will be filed and indexed as part of the registered agent filing. A statement of consent that is submitted separately for purposes of recordation with the secretary of state will be filed and indexed as a separate record.

(f) Fees. Except for statements filed pursuant to subsection (d)(1) of this section, the fee for filing a statement of consent to serve as registered agent for a domestic or foreign represented entity is the same fee imposed for the entity type under Chapter 4 of the Business Organizations Code for the filing of an instrument for which no fee is specified; namely, $15, unless the represented entity is a nonprofit corporation, cooperative association, unincorporated nonprofit association, or credit union. The fee imposed for a statement of consent submitted by a nonprofit corporation, cooperative association, unincorporated nonprofit association or credit union is $5. There is no fee for filing a statement of consent to serve as registered agent submitted pursuant to subsection (d)(1) of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 23, 2009.

TRD-200904836
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Earliest possible date of adoption: December 6, 2009
For further information, please call: (512) 463-5562

♦ ♦ ♦

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 18. ORGANIC STANDARDS AND CERTIFICATION

SUBCHAPTER F. ADMINISTRATIVE

DIVISION 5. MISCELLANEOUS PROVISIONS

4 TAC §18.702

The Texas Department of Agriculture (the department) proposes amendments to §18.702, regarding fees for certification and registration of organic businesses operating in Texas. These amendments are proposed to achieve full cost recovery for the costs of administering the program. The amendments will also recover the cost of hiring additional staff to enable the program to provide more efficient, timely services to individuals and businesses seeking organic certification.

The proposed amendments to §18.702 will equitably increase organic certification fees, and correct disparities in the current fee structure by adjusting fees and establishing additional fees for certain certification types. The proposed changes would increase certification fees an average of approximately 56%. A proposed new fee for organic livestock operations would recover costs associated with certifying operations with a large number of animals. Retail operations that process organic products in several store departments would be charged additional proposed fees for in-store processing to recover the increased costs required to verify compliance.

Martin Jiminez, Coordinator for Organic Certification, has determined that for the first five-year period the proposed amendments are in effect, there will be fiscal implications for state government due to the increase in fees collected. There will be an estimated increase in state revenue of $164,176 in FY 2010, which began September 1, 2009. With an estimated 3% annual increase in program participation, the estimated increase in state revenue for years 2-5 is as follows: Year 2 - $173,898; Year 3 - $184,160; Year 4 - $197,071; and Year 5 - $209,994, as a result of administering the proposed fee amendments. There is no anticipated fiscal impact for local governments as a result of administering or enforcing the rule amendments, as proposed.

Mr. Jiminez has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of administering the proposed amendments will be achieving effective recovery of the costs of administering the Organic Certification Program and ensuring timely processing of applications for certification. The anticipated cost to micro-businesses, small businesses or individuals required to comply with the amendments would be an average fee increase of $424 for a total average fee of $910 per certified entity. The average certification cost charged by private certifying agents providing organic certification services is $1,826 per certified entity. The department currently has a deficit relating to its administration of the organic certification program, which will be greatly reduced or eliminated by charging the proposed fees. The department believes that not increasing the fees, as proposed, will result in a greater gap between the costs to the state of providing this service for every year the fees are not increased, which could lead to an inability of the department to continue the program. The alternative, of not administering a state organic certification program, is not feasible since Texas organic producers would be required to seek certification from private certifiers, at a much higher cost.

Comments on the proposal may be submitted to Martin Jiminez, Coordinator for Organic Certification, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments to §18.702 are proposed under Texas Agriculture Code (the Code), §18.002, which provides the department with the authority to adopt rules for the certification of organic products; §18.006 which requires the department to set fees for the organic certification program in amounts that enable it to recover the costs of administering the program; and §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The Code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

§18.702. Fees.

(a) - (c) (No change.)

(d) Additional fees may be charged for additions of fields or categories to be certified after initial application fees are submitted, for additional services provided, or for additional inspections that are necessary to verify compliance with organic standards.

(e) Prorated fees may be charged for extension of an annual certification period that [~~which~~] is prescribed by the department.

(f) Fees for certification or annual update of certification are based on the following schedules and shall become effective for applications and annual updates for the 2010 [~~2004~~] certification year:

(1) Application fee - all business types - $50 [~~$25~~]; and

(2) Certification fee - based on business types. Fees are additive, with a minimum total certification fee of $275 [~~$150~~] for Producers.

(A) Producer (land). Fees for land in crop production at any time during the year (including actual production acres - harvested crops, hay and livestock feed grains; and including buffer zones that are harvested and sold as conventional crops) are as follows:

(i) less than one acre: $225 [~~$150~~];

(ii) one to less than five acres: $325 [~~$200~~];

(iii) five to less than 25 acres: $500 [~~$300~~];

(iv) 25 to less than 50 acres: $650 [~~$400~~];

(v) 50 to 100 acres: $800 [~~$500~~]; and

(vi) greater than 100 acres: $850 for the first 100 acres [~~$500~~] + $100 [~~$50~~] for each additional increment or portion of 100 acres.

(B) Producer (land). Fees for land not in crop production for the entire year (including pasture, green manure crops, cover crops, buffer zones that are not harvested, fallow land and range land) are as follows:

(i) up to 100 acres: $100 [~~$50~~];

(ii) greater than 100 acres: $100 for the first 100 acres [~~$50~~] + $10 [~~$5~~] for each additional increment or portion of 100 acres.

(iii) (No change.)

(C) Producer (land). Greenhouse, indoor or outdoor container [~~Greenhouse/indoor~~] production areas shall include actual production area and required buffer zones. Fees for greenhouse, indoor or outdoor container [~~greenhouse/indoor~~] production are:

(i) less than 1,000 sq. ft.: $100 [~~$50~~];

(ii) 1,000 to 3,000 sq. ft.: $150 [~~$100~~]; and

(iii) greater than 3,000 sq. ft.: $150 for the first 3,000 sq. ft + $100 [~~+ $50~~] for each additional increment or portion of 3,000 sq. ft.

(D) Producer (livestock). Livestock production fees shall be based on the land area used to produce the livestock, with a separate fee required for each type of livestock production, plus a fee for the number of animals of each type. Fees for livestock production are as follows:

(i) land area/type of livestock:

(I) [~~(i)~~] for each type of livestock raised on less than five acres: $100[~~$60~~];

(II) [~~(ii)~~] for each type of livestock raised on five to 50 acres: $150 [~~$100~~]; [~~and~~]

(III) [~~(iii)~~] for each type of livestock raised on greater than 50 acres: $300; and [~~$200.~~]

(ii) number of animals:

(I) cattle, beef or dairy (per 100 animals): $50;

(II) goats, sheep, swine (per 100 animals): $25;

(III) chickens, turkeys, other poultry (per 1,000 birds): $25; and

(IV) aquatic species (per production unit): $50.

(E) Processors. Fees for certification or annual update of a certification for each processing facility are based on the following schedule (if more than one category applies, fees are additive.):

(i) certified producer with on-farm state licensed kitchen processing own certified food ingredients: $100 [~~$50~~];

(ii) certified producer with on-farm state licensed kitchen processing certified food ingredients other than his own: $100 [~~$50~~];

(iii) certified producer with on-farm processing of own certified feed: $100 [~~$50~~];

(iv) certified producer with on-farm processing of certified feed other than his own: $100 [~~$50~~];

(v) certified producer with on-farm storage or processing of own certified milk products: $100 [~~$50~~];

(vi) certified producer with on-farm storage or processing of certified milk products other than his own: $100 [~~$50~~];

(vii) cotton ginning: $500 [~~$300~~];

(viii) textile manufacturing: $1,000 [~~$600~~];

(ix) commercial food processor: $1,000 [~~$600~~]; and

(x) commercial feed processor: $1,000 [~~$600~~].

(F) Distributors. Fees for certification or annual update of a certification for each distribution facility are based on the following schedule:

(i) broker/trader food products: $700 [~~$400~~];

(ii) broker/trader feed products: $700 [~~$400~~];

(iii) broker/trader fiber products: $700 [~~$400~~];

(iv) warehousing/storage of food products: $1,000 [~~$600~~];

(v) warehousing/storage of feed products: $1,000 [~~$600~~];

(vi) warehousing/storage/textile converter (cut and sew) of fiber products: $1,000 [~~$600~~];

(vii) packing/grading/sizing of food products: $700 [~~$400~~]; and

(viii) packing/grading/sizing of feed products: $700 [~~$400~~].

(G) Retailers. Fees [~~The fee~~] for certification or annual update of [~~for~~] certification for each retail location are based on the following schedule: [~~is $100.~~]

(i) basic fee, which includes handling of fresh organic produce in the produce department: $200; and

(ii) in-store processing of organic products (such as salad bar, deli, bakery, meat cutting/packaging, bulk bins, etc): $100 per department.

(3) Re-inspection fee: $150 [~~$100~~] per re-inspection.

(g) (No change.)

(h) Registration Fees: Fees for application or renewal of registration are based on the following schedules:

(1) (No change.)

(2) Organic certifying agents: $50 [~~$25~~];

(i) Transaction Certificate Fee: $75 per certificate [~~$50 per transaction certificate~~].

(j) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 26, 2009.

TRD-200904846

Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: December 6, 2009
For further information, please call: (512) 463-4075

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 11. SURFACE MINING AND RECLAMATION DIVISION

SUBCHAPTER C. SUBSTANTIVE RULES--URANIUM EXPLORATION AND SURFACE MINING

The Railroad Commission of Texas proposes amendments to §11.71 and §11.72, relating to Purpose and Authority; and Applicability; new §11.73 and §11.74, relating to Uranium Exploration Forms; and Information Subject to Public Review; amendments to §11.81 and §11.82, relating to Statutory Definitions; and Regulatory Definitions; amendments to §§11.92 - 11.100, relating to Permit Application; Elements of Permit Application; Application Approval; Bonding, Insurance, and Payment of Fees; Permit Issuance; Renewal; Transfer; Permit Approval; and Permit Denial; amendments to §11.113 and §11.114, relating to Revocation or Suspension without Consent; and Revision on Motion or with Consent; and new rules §§11.131 - 11.142, relating to Uranium Exploration Permit: General Provisions; Application to Conduct Uranium Exploration Activity; Uranium Exploration Permit Revision; Uranium Exploration Permit Renewal; Uranium Exploration Permit Transfer; Uranium Exploration Permit Fees; Commission Notice of Uranium Exploration Permit Application, Issuance, and Denial; Uranium Exploration Drill Site Operating and Reclamation Requirements; Uranium Exploration Drill Site Plugging and Reporting Requirements; Commission and Groundwater Conservation District Jurisdiction; Groundwater Quality and Well Information; and Groundwater Analysis and Reporting; amendments to §§11.151 - 11.153, relating to Plan; Standards; and Alternative Methods; amendments to §11.181 and §11.182, relating to Closing; and Release; amendments to §11.194, relating to Release from Reporting Requirements; and amendments to §11.203, and §11.206, relating to Duration of Liability; and Release or Reduction of Bonds.

In a separate, concurrent rulemaking, the Commission proposes the repeal of §§11.131 - 11.139, relating to Notice of Exploration through Overburden Removal; Content of Notice; Extraction of Minerals; Removal of Minerals; Lands Unsuitable for Surface Mining; Notice of Exploration Involving Hole Drilling; Permit; Reclamation and Plugging Requirements; and Reporting, in order to propose the corresponding new rules §§11.131 - 11.142 mentioned above.

In §11.71 and §11.72, the Commission proposes to add the words "exploration," "explored lands," and "exploration activity" pursuant to the expanded statutory authority to regulate uranium exploration enacted by House Bill 3837, 80th Legislature (2007).

The Commission proposes new §11.73 to specify the forms required to be filed with the Commission for various purposes. The form numbers, names, creation or revision dates, and the applicable rule numbers are listed in the table. This would require a Commission proposal to amend a form, create a new form, or to stop using a current form to be noticed as a rulemaking proceeding, which would include notice and an opportunity for interested persons to comment.

The Commission proposes new §11.74 to establish that all information filed by an applicant or permittee is considered essential for public review unless the applicant or permittee identifies specific information to be confidential and the director determines whether it is or is not essential for public review. This rule largely mirrors the language in Texas Natural Resources Code, §131.048.

In §11.81, the Commission proposes an amendment to the definition of "party to the administrative proceedings," the deletion of the definition of "person affected," and an amendment to the definition of "surface mining permit." In §11.82, the Commission proposes an amendment to the definition of "Act," and proposes new definitions for "APA," "applicant," "director," "Division," "drilling completion," "examiner," "exploration borehole," "permit," "uranium exploration permit," "well," and "well completion." The definitions for "APA," "applicant," "director," "division," "drilling completion," "examiner," "well," and "well completion" clarify terms that are used in the chapter. The definitions for "exploration borehole," "permittee," and "uranium exploration permit" clarify terms resulting from HB 3837. In §11.81(14), the Commission proposes wording in the definition of "surface mining permit" to clarify that a permit does not include a discharge permit issued by the Commission pursuant to the Texas Uranium Exploration, Surface Mining, and Reclamation Act, Texas Natural Resources Code, Chapter 131, Subchapter H, or an exploration permit issued by the Commission pursuant to Subchapter B of this chapter.

For §§11.92 - 11.100, the Commission proposes minor changes to the rule titles to clarify that these rules apply to surface mining activities; in §11.93 and §11.94, the Commission proposes an increase in the initial application fee from $200 to $400. In §11.95, the Commission proposes to clarify that fee payment checks should be made payable to the Railroad Commission of Texas. In §11.100, the Commission proposes wording to correct the name of a state agency.

The Commission proposes minor changes in §11.113 and §11.114 to correct references to other rules.

The Commission proposes the repeal of §§11.131 - 11.139 in a separate, concurrent rulemaking, and here proposes the corresponding new rules §§11.131 - 11.142, to implement new statutory provisions enacted by HB 3837. Proposed new §11.131 sets forth the requirement to obtain a permit for uranium exploration prior to conducting such activity, and outlines the scope of such permit, including a general description of the purposes and authority granted by a permit. This section also establishes the permit term for exploration and the requirements for permit renewal until certain activities are completed.

Each applicant for a uranium exploration permit must comply with proposed new §11.132 by filing Form SMRD-3U, including information regarding the applicant, the names and addresses of each entity that the Commission is required to notify under proposed new §11.137 in this rulemaking.

Proposed new §11.132 also requires a map or maps of the area of proposed exploration, and a list of permit-area surface owners and mineral owners that specifically identifies those mineral

owners from whom right of entry to conduct exploration activities has been obtained. In addition, sufficient geologic and hydrologic information for the proposed area of exploration must be included to support the proposed plan for borehole plugging and well installation.

Proposed new §§11.133, 11.134, and 11.135 establish the minimum requirements, respectively, for the content of applications for revision, renewal, and transfer of exploration permits. Applicants for revision or renewal must file Form SMRD-3U describing any changes to the exploration activity, and permittees requesting a transfer must file Form SMRD-5U.

Proposed new §11.136 pertains to uranium exploration permit fees. An initial application fee for uranium exploration consists of an amount equal to $1.50 per acre for each acre included within the proposed exploration area identified on a map as part of the application plus $50 for each exploration borehole drilled during the twelve-month permit term. An application for a permit revision that proposes additional exploration area must be accompanied by the appropriate fee of $1.50 per acre for each additional acre. Permit revision fees will not be prorated. Permit renewal applications must be accompanied by a permit renewal application fee calculated on the same basis for acres and number of boreholes. Permit transfer applications require a $500 nonrefundable fee. Subsection (e) requires these fees to be paid with the submission of the monthly borehole plugging reports (Forms SMRD-38U or 39U).

Proposed new §11.137 establishes the requirements for the Commission's notification to certain entities in the area of proposed activity for a new exploration permit, revision, renewal, or transfer. These entities, to be identified by name and address in the permit application, pursuant to proposed new §11.132, include the local groundwater conservation district, if present, the mayor and health authority of each municipality in the locality, the county judge and county health authority of each county in which the proposed exploration is to occur, and each member of the Texas Legislature representing the area in which the proposed exploration is to occur.

Proposed new §11.138 sets forth the drill site operating and reclamation requirements for uranium exploration. No permittee may drill an exploration borehole within 150 horizontal feet of an existing water well without the written consent of the well owner. The rule further sets out a permittee's duty to protect the drill site and ensure that reclamation occurs as contemporaneously as practicable. The permittee must notify the Division prior to certain activities to allow scheduling of inspections.

Proposed new §11.139 establishes technical requirements for borehole plugging, marking, and reporting, including acceptable plugging materials and methodology, a reasonable time frame for effecting the plugging of exploration boreholes, and requirements for marking plugged holes in the field to facilitate inspection following plugging. Proposed subsections (e) and (g) require a monthly report of plugging (on Form SMRD-39U or 38U).

Proposed new §11.140 addresses groundwater quality pursuant to HB 3837 and specifies the Commission's jurisdiction over uranium exploration boreholes and cased exploration wells, and requires a permittee to register cased exploration wells with the Texas Commission on Environmental Quality pursuant to its rule at 30 TAC §331.221 (relating to Registration of Wells). Certain wells are subject to the requirements of groundwater conservation districts. The proposed new rule also requires permittees to file monthly reports with the Commission and the applicable groundwater conservation districts reporting the total amount of water produced from certain wells.

Proposed new §11.141 requires permittees to obtain groundwater samples for analysis at least 15 days prior to commencement of drilling. Within 90 days of receiving the laboratory analysis, the applicant must provide the pre-exploration groundwater quality information to the groundwater conservation district. Proposed new §11.142 requires groundwater quality analysis according to the specified groundwater monitoring parameters. Permittees must report the analyses to the Commission and the groundwater conservation districts.

Finally, the Commission proposes amendments to §§11.151, 11.152, 11.153, 11.181, 11.182, 11.194, 11.203, and 11.206 to correct statutory citations and make other non-substantive clarifications.

John Caudle, Director, Surface Mining and Reclamation Division, has determined that during each year of the first five years the proposed amendments and new rules would be in effect, the net fiscal effect on state government will be minimal if not zero, because the anticipated program costs match closely with anticipated income resulting from the proposed fee structure. Program costs for the Commission to implement the regulatory program established in HB 3837 result from continued staffing needs that require a minimum of two full-time employees, one each for uranium exploration permit review and for site inspection activities, plus operating expenses to conduct the necessary inspections. The proposed fees for exploration permitting specified in new rule §11.136 are set at an amount that the Commission anticipates will recover the costs of the regulatory program.

The purpose of the proposed amendments and new rules is to clarify several existing rules and to promulgate more comprehensive rules regarding uranium exploration by drillhole pursuant to the expanded statutory authority enacted in HB 3837. The Commission does not anticipate that the amendments will result in either an increase or decrease in the total number of uranium exploration permit applications filed with the Commission. There will be no fiscal impact on local governments.

Mr. Caudle has determined that the public benefit resulting from the proposed amendments and new rules will be a fee structure for uranium exploration activities that aligns the fees paid by the uranium exploration and mining industry with the costs incurred by the Commission to implement the regulatory program established in HB 3837. In addition, the proposed amendments and new rules provide a more comprehensive regulatory program that is easier to understand and comply with.

Mr. Caudle has determined that during each year of the first five years the proposed amendments and new rules would be in effect will increase the economic cost to the uranium mining industry as a whole by a total of $153,750. This amount is based on the Commission's estimated manpower needs and is derived from a proposed annual fee of $1.50 per permit acre and a fee of $50 for each exploration borehole drilled during the annual permit term. Mr. Caudle estimates an average of 15 initial or permit renewal applications per year with an average of 3,500 acres and 100 boreholes per permit, yielding an estimated $153,750 per year.

Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic Effect, directs that, as part of the rulemaking process, a state agency prepare an Economic Impact Statement that assesses the potential impact of a proposed rule on small businesses and micro-businesses, and a

Regulatory Flexibility Analysis that considers alternative methods of achieving the purpose of the rule if the proposed rule will have an adverse economic effect on small businesses or micro-businesses. The Commission's proposed amendments and new rules in Texas Administrative Code, Title 16, Chapter 11, are anticipated to have a potential impact on those companies that perform uranium exploration in this state. No permits have been issued for surface uranium mining since 1993. Uranium exploration and mining companies are not required to make filings with the Commission reporting the number of employees or annual gross receipts, which are elements of the definitions of "micro-business" and "small business" in Texas Government Code, §2006.001; nevertheless, the Commission can definitively determine that no current permittee is a small business or micro-business, as those terms are defined. Specifically, Texas Government Code, §2006.001(2), defines a "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit, is independently owned and operated, and has fewer than 100 employees or less than $6 million in annual gross receipts. Texas Government Code, §2006.001(1), defines "micro-business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit, is independently owned and operated, and has not more than 20 employees. The uranium exploration and mining companies operating in Texas are large companies having at least 500 employees or companies under common control of large companies, which means they do not meet two of the three elements of either definition. All of the exploration permits issued since 2005 are held by just seven companies. The Commission does not expect this scale of activities to change appreciably in the future.

The North American Industrial Classification System (NAICS) sets forth categories of business types, and the appropriate category for uranium exploration and mining is 212291 (Uranium-Radium-Vanadium Ore Mining). In the Texas NAICS on the Texas Comptroller of Public Accounts website page entitled "HB 3430 Reporting Requirements-Determining Potential Effects on Small Businesses," this category is not delineated. The most suitable category on that website is business type 212 (Mining [except oil and gas]), for which there are listed 281 companies in Texas. This source further indicates that 227 companies (81 percent) are small businesses or micro-businesses as defined in Texas Government Code, §2006.002. No further breakdown is provided with respect to the relative size of the companies. Nevertheless, for purposes of performing the analysis mandated by Texas Government Code, §2006.002(c), Mr. Caudle concludes that, based on the seven companies that have held permits since 2005 or later, no companies that could potentially be affected by the proposed rules would be classified as small businesses or micro-businesses, as those terms are defined in Texas Government Code, §2006.001.

The Commission's experience with uranium permitting under the current rules indicates that the larger companies have held several permits of a larger total acreage, whereas the subsidiary companies under common control of a larger company have generally conducted exploration on known prospects of a small size, ranging from about 150 to 1,000 acres. The proposed fee structure is based on the areal extent of the permit area and the number of drill holes drilled, factors that would both tend to greatly reduce the likely actual permit-fee costs for the smaller subsidiary businesses and modestly increase the actual permit-fee costs for the largest businesses. None of these factors, however, is anticipated to significantly affect decisions regarding the number and footage of holes drilled. Other factors that might affect an assessment of the economic burden of regulating uranium exploration, such as net value of the mineral resource in the average explored area, cannot be assessed because this information is neither reported nor otherwise available to the Commission.

The proposed reporting requirements for plugging of exploration boreholes and completion of cased exploration holes may require additional coordination between the drilling contractor and the exploration permittee. The information required to be reported, however, is information that is already routinely recorded by exploration companies during drilling, although not currently on a form or in the format designated by the Commission in the proposed rules, and much of the information to be reported under the proposed new rules is already required to be reported by affidavit under the existing rules. The Commission anticipates that there will be a nominal additional cost to the permittee as a result of the proposed changes during transition to the revised reporting scheme with new reporting forms and additional postage costs.

The proposed rulemaking will not affect a local economy; therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code, §2002.022.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at http://www.rrc.state.tx.us/rules/commentform.php; or by electronic mail to rulescoordinator@rrc.state.tx.us and should refer to SMRD Docket No. 01-09. Comments will be accepted until 5:00 p.m. on Monday, December 7, 2009, which is 31 days after publication in the *Texas Register.* The Commission finds that this comment period is reasonable because the proposal, as well as an online comment form, will be available on the Commission's web site no later than the day after the open meeting at which the Commission approves publication of the proposal, giving interested persons more than two additional weeks to review, analyze, and draft and submit comments. Further, the initial draft version of this proposal was the subject of a stakeholders' meeting, at which the Commission staff received input regarding the draft proposal. As a result of that meeting, the staff made some changes to the draft before presenting it to the Commission to request approval to publish the proposal in the *Texas Register* for formal comment. The Commission directed that additional revisions be made, and those have been incorporated into the current proposal.

The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call John Caudle, Director, Surface Mining and Reclamation Division, at (512) 463-6900. The status of all Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.php.

DIVISION 1. INTRODUCTION

16 TAC §§11.71 - 11.74

The Commission proposes the amendments and new rules under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations; Texas Natural Resources Code, §131.355, which authorizes the Commission

to impose fees and mandates the fee collection authorized in House Bill 3837, 80th Legislature (2007) and House Bill 1, Article VI, Railroad Commission Rider 13, 80th Legislature (2007), which requires the Commission to assess fees sufficient to generate revenue to cover the contingent general revenue appropriation.

Statutory authority: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed amendments and new rules.

Issued in Austin, Texas on October 22, 2009.

§11.71. Purpose and Authority.
In order to prevent the adverse effects to society and the environment resulting from unregulated surface mining operations; to assure that the rights of surface landowners and other persons with a legal interest in the land or appurtenances are protected from such unregulated surface mining operations; to assure that surface mining operations are not conducted where reclamation as required by the Texas Railroad Commission is not possible; to assure that exploration and surface mining operations are so conducted as to prevent unreasonable degradation to land and water resources; to assure that reclamation of all explored lands and surface-mined lands is accomplished as contemporaneously as practicable with the exploration activity and surface mining operation, recognizing that the extraction of minerals by responsible mining operations is an essential and beneficial economic activity, these sections are promulgated pursuant to the directive and authority of the Texas Uranium Exploration, Surface Mining, and Reclamation Act, Texas Natural Resources Code, Chapter 131 et seq., (the "Act"), and any amendment to it.

§11.72. Applicability.
(a) No person shall conduct any exploration activity or surface mining operation without having first obtained a surface mining permit issued by the commission pursuant to this subchapter and the Act.

(b) The provisions of this chapter [~~these sections~~] shall not apply to:

(1) surface mining operations conducted on public lands regulated by the General Land Office of Texas; provided that such affected lands are reclaimed in a manner consistent with the provisions of this chapter [~~these sections~~]; and

(2) (No change.)

§11.73. Uranium Exploration Forms.
Forms required to be filed at the Commission for conducting uranium exploration shall be those prescribed by the Commission as listed in Table 1 of this section. All Commission forms listed in Table 1 for uranium exploration and required to be filed at the Commission shall be kept by the Commission secretary and posted on the Commission's web site. Notice of any new or amended forms shall be issued by the Commission. The Commission may at its discretion accept an earlier version of a prescribed form, provided that it contains all required information.
Figure: 16 TAC §11.73

§11.74. Information Subject to Public Review.
(a) All information filed by an applicant or permittee is considered essential for public review unless the provisions of subsection (b) of this section apply.

(b) An applicant or permittee may identify as confidential specific information concerning mineral deposits, test borings, core samples, geophysical logs, trade secrets, or privileged commercial or financial information relating to the competitive rights of the applicant for or permittee of any exploration permit or surface mining permit. At the time the information is filed, the applicant or permittee shall identify all specific information claimed to be confidential and shall set forth all facts and arguments in support of this claim. Information claimed to be confidential shall be submitted separately from the rest of the application in a clearly marked sealed envelope.

(1) The Director shall review the specific information identified as confidential by the applicant or permittee and, within 10 business days from the date of filing, the Director shall make a written determination as to whether the specific information is essential for public review. The Director's determination is subject to appeal to the Commission within 10 business days of issuing such determination. If the Director determines that the specific information is essential for public review, the Director shall set forth all facts and reasoning in support of that determination. Ten business days following the issuance of that determination, the Director shall place the specific information in the public file, unless the applicant or permittee appeals the Director's determination to the Commission.

(2) A member, employee, or agent of the Commission shall not disclose specific information that has been determined in paragraph (1) of this subsection to be confidential and not essential for public review.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 22, 2009.

TRD-200904818
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: December 6, 2009
For further information, please call: (512) 475-1295

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DIVISION 2. DEFINITIONS

16 TAC §11.81, §11.82

The Commission proposes the amendments under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations; Texas Natural Resources Code, §131.355, which authorizes the Commission to impose fees and mandates the fee collection authorized in House Bill 3837, 80th Legislature (2007) and House Bill 1, Article VI, Railroad Commission Rider 13, 80th Legislature (2007), which requires the Commission to assess fees sufficient to generate revenue to cover the contingent general revenue appropriation.

Statutory authority: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed amendments.

Issued in Austin, Texas on October 22, 2009.

§11.81. Statutory Definitions.

As used in this subchapter, the following words defined in the Act, §131.004, shall have the definitions therein set forth and as they may be hereafter severally amended. For convenience in reference, such definitions are as follows.

(1) - (7) (No change.)

(8) Party to the administrative proceedings--Any person who has participated in a public hearing or filed a valid petition or timely objection pursuant to any provision of the Act; may or may not be a party as defined in the APA.

(9) - (10) (No change.)

~~[(11) Person affected--Any person who is a resident of a county or any county adjacent or contiguous to the county in which a mining operation is or is proposed to be located, including any person who is doing business or owns land in the county or adjacent or contiguous county and any local government and who demonstrates that he has suffered or will suffer actual injury or economic damage.]~~

(11) [~~(12)~~] Reclamation--The process of restoring an area affected by a surface mining operation to its original or other substantially beneficial condition, considering past and possible future uses of the area and the surrounding topography.

(12) [~~(13)~~] Surface mining--The mining of minerals by removing the overburden lying above the natural deposit of minerals and mining directly from the natural deposits that are exposed and those aspects of underground mining having significant effects on the surface; provided, this definition shall not be construed to include in situ mining activities associated with the removal of uranium or uranium ore.

(13) [~~(14)~~] Surface mining operation--Those activities conducted at or near the mining site and concomitant with the surface mining, including extraction, storage, processing and shipping of minerals and reclamation of the land affected.

(14) [~~(15)~~] Surface mining permit--The written certification by the commission that the named operator may conduct the surface mining operations described in the certification during the term of the surface mining permit and in the manner established in the certification. A surface mining permit does not include:

(A) a discharge permit issued by the Commission pursuant to the Act; or

(B) an exploration permit issued by the Commission pursuant to this subchapter (relating to Substantive Rules--Uranium Exploration and Surface Mining).

(15) [~~(16)~~] Topsoil--The unconsolidated mineral matter naturally present on the surface of the earth which has been subjected to and influenced by genetic and environmental factors of parent material, climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and which is necessary for the growth and regeneration of vegetation on the surface of the earth.

(16) [~~(17)~~] Toxic material--Any substance present in sufficient concentration or amount to cause injury or illness to plant, animal, or human life.

§11.82. Regulatory Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Act--The Texas Uranium Exploration, Surface Mining, and Reclamation Act, Texas Natural Resources Code, Chapter 131 et seq.

(3) Administrative Procedure Act; APA--Texas Government Code, Chapter 2001.

(4) Applicant--A person who is applying for a new permit or a revision to or a renewal or transfer of a current permit.

(5) [~~(3)~~] Contiguous area--Includes all areas touching upon the boundaries of the land affected by the surface mining operation which the operator proposes to surface mine notwithstanding areas separated by terrain features such as streams, roads, gas lines, and power transmission lines.

(6) Director--The director of the Surface Mining and Reclamation Division or the director's delegate.

(7) Division--The Surface Mining and Reclamation Division of the Commission or its director or employees.

(8) Drilling completion--The time at which total drilling depth has been reached and the exploration borehole has been logged.

(9) Examiner--The person appointed by the Commission to conduct hearings.

(10) Exploration borehole--An uncased hole created with a drill, auger, or other boring tool for exploring strata in search of mineral deposits.

(11) [~~(4)~~] Highwall--The vertical or nearly vertical wall of exposed strata adjacent to the site of a mineral deposit which results from surface mining excavation.

(12) Permit--A surface mining permit, as defined in this section, or a uranium exploration permit, as defined in this section.

(13) [~~(5)~~] Rules--The regulations promulgated by the commission pursuant to the authority of the Texas Uranium Exploration, Surface Mining, and Reclamation Act.

(14) [~~(6)~~] Terracing--Grading where the steepest contour of the highwall shall not be at a greater angle from the horizontal than that set by the commission in approving a specific reclamation plan calling for terracing with the table portion of the restored area flat and a flat terrace without depressions to hold water and with adequate provision for drainage, unless otherwise approved by the commission.

(15) Uranium exploration permit--The written certification by the Commission that the named entity may conduct the uranium exploration activities described in the certification during the term of the permit and in the manner and subject to the conditions established in the certification. A uranium exploration permit does not include:

(A) a uranium surface mining permit issued by the Commission pursuant to this chapter; or

(B) a permit issued by the Texas Commission on Environmental Quality pursuant to Texas Water Code, §27.011 and §27.0513.

(16) Well--Any excavation that is drilled, cored, bored, washed, fractured, driven, dug, jetted, or otherwise constructed for the intended use of locating, monitoring, dewatering, depressurizing,

observing, diverting, or acquiring ground water, or for conducting pumping or aquifer tests.

(17) Well completion--Activities undertaken as a part of well installation to render the well usable for its intended purpose. Well completion includes, at a minimum, the installation of casing; sealing the well annulus to the ground surface; and capping the well.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 22, 2009.

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Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: December 6, 2009
For further information, please call: (512) 475-1295

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DIVISION 3. URANIUM SURFACE MINING PERMITS

16 TAC §§11.92 - 11.100

The Commission proposes the amendments under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations; Texas Natural Resources Code, §131.355, which authorizes the Commission to impose fees and mandates the fee collection authorized in House Bill 3837, 80th Legislature (2007) and House Bill 1, Article VI, Railroad Commission Rider 13, 80th Legislature (2007), which requires the Commission to assess fees sufficient to generate revenue to cover the contingent general revenue appropriation.

Statutory authority: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed amendments.

Issued in Austin, Texas on October 22, 2009.

§11.92. Surface Mining Permit Application.

A permit application may cover one or more surface mining operations which may or may not be contiguous. The application for noncontiguous operations may contain a consolidated reclamation plan covering each of the separate operations unless the nature of the operations varies to such an extent to require the delineation of distinctly separate reclamation plans. Three copies of the permit application shall be submitted to the commission.

§11.93. Elements of Surface Mining Permit Application.

The permit application for surface uranium mining shall consist of the following elements.

(1) An initial application fee of $400 [~~$200~~] shall be submitted in the form of cash or check and if check, it should be made payable to the Railroad Commission [~~State~~] of Texas.

(2) - (3) (No change.)

(4) The applicant shall include a plan to reclaim all land disturbed by the surface mining operation pursuant to the requirements of §§11.151-11.154 of this title (relating to Uranium Surface Mining Reclamation).

(5) (No change.)

§11.94. Surface Mining Permit Application Approval.

(a) After approval but prior to issuance of the surface mining permit, the applicant shall pay $10 per acre of the permit area, in addition to the initial $400 [~~$200~~] application fee. This fee may be paid in annual installments apportioned over the term of the permit on the basis of the acreage to be disturbed during 12-month periods.

(b) (No change.)

§11.95. Surface Mining Bonding, Insurance, and Payment of Fees.

After receipt of notification of approval as provided in §11.94 of this title (relating to Surface Mining Permit Application Approval), applicant shall submit to the commission within 180 days following notification of approval:

(1) (No change.)

(2) cash or check, made payable to the Railroad Commission of Texas, in the amount set forth in the notice of approval to cover the approved application fee or the first annual installment thereon; and

(3) unless the commission accepts the bond of the operator itself, as provided in §§11.201-11.206 of this title (relating to Performance Bonds), a performance bond (or other substitute collateral) covering the surface mining operation or the first increment thereof, on a form to be provided by the commission (payable to the Railroad Commission [~~State~~] of Texas) and conditioned on full and faithful performance of all requirements of the Act and the permit for which the application was filed; provided, however, that if the bond (or other substitute collateral) is provided in increments, it shall cover that area of land within the permit area on which the first increment of surface mining and reclamation operations will be conducted. The applicant shall give the commission 30 days notice before undertaking each additional increment of surface mining operations and shall include with such notice an appropriate performance bond for such increment.

§11.96. Surface Mining Permit Issuance.

The applicant shall have the right to proceed with activities covered by his application immediately upon submitting the certificates, bond (or other substitute collateral), approved application fee required in §11.95 of this title (relating to Surface Mining Bonding, Insurance, and Payment of Fees), and the commission has issued a written permit for such activities. The commission will issue a written permit within 30 days after the certificates, bonds (or other substitute collateral), and approved application fee required in §11.95 of this title (relating to Surface Mining Bonding, Insurance, and Payment of Fees), have been received by the commission.

§11.97. Surface Mining Permit Renewal.

(a) - (d) (No change.)

§11.98. Surface Mining Permit Transfer.

(a) No transfer, assignment, or sale of the rights granted under any permit issued pursuant to these rules shall be made without the written approval of the commission. Any person desiring to succeed to the interests of a permittee hereunder must file an application on a form prescribed by the commission setting out the following information.

(1) (No change.)

(2) Proof that the public liability insurance requirement of §11.95(1) of this title (relating to Surface Mining Bonding, Insurance, and Payment of Fees) will be fulfilled.

(3) Proof that the performance bond or other substitute collateral required in §11.95(3) of this title (relating to Surface Mining Bonding, Insurance, and Payment of Fees) will be furnished.

(4) - (5) (No change.)

(b) The application for transfer shall be approved, subsequent to notice and opportunity for public hearing, if any is required under §§11.91-11.100 of this title (relating to Uranium Surface Mining Permits), on the written finding by the commission that the following requirements have been met.

(1) - (4) (No change.)

(c) (No change.)

§11.99. Surface Mining Permit Approval.

The surface mining permit shall be granted if it is established that the application complies with the requirements of this chapter [~~these sections~~] and all applicable federal and state laws. The commission may approve a surface mining permit conditioned upon the approval of all other state permits or licenses which may be required.

§11.100. Surface Mining Permit Denial.

The commission shall deny a uranium surface mining permit if:

(1) - (2) (No change.)

(3) The commission is advised by the Texas Commission on Environmental Quality [~~Department of Water Resources~~] that the proposed mining operation will cause pollution of any water of the state[~~,~~] or [~~by the Texas Air Control Board~~] that the proposed mining operation will cause pollution of the ambient air of the state, in violation of the laws of this state.

(4) - (7) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Mary Ross McDonald
Managing Director
Railroad Commission of Texas
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DIVISION 4. TERMINATION, SUSPENSION, REVISION, AND CORRECTION OF PERMITS

16 TAC §11.113, §11.114

The Commission proposes the amendments under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations; Texas Natural Resources Code, §131.355, which authorizes the Commission to impose fees and mandates the fee collection authorized in House Bill 3837, 80th Legislature (2007) and House Bill 1, Article VI, Railroad Commission Rider 13, 80th Legislature (2007), which requires the Commission to assess fees sufficient to generate revenue to cover the contingent general revenue appropriation.

Statutory authority: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed amendments.

Issued in Austin, Texas on October 22, 2009.

§11.113. Revocation or Suspension without Consent.

Whenever on the basis of any inspection, the commission or its authorized agent or representative determines or has reason to believe that any of the elements contained in §11.111 of this title (relating to Basis of Revocation and Suspension), the commission shall:

(1) - (2) (No change.)

(3) when the elements of §11.111(3) of this title (relating to Basis of Revocation and Suspension) exist, issue an order to the permittee to show cause as to why the permit should not be suspended or revoked. The order shall fix a time and place for a hearing to be held in accordance with the notice requirements of §§11.91-11.100 of this title (relating to Uranium Surface Mining Permits). On the permittee's failure to show cause as to why the permit should not be suspended or revoked, the commission shall suspend or revoke the permit.

§11.114. Revision on Motion or with Consent.

The holder of a permit on his own initiative or upon request of the commission may file an application to revise the permit in any particular.

(1) A document shall be prepared setting forth the revisions desired. The holder of a permit shall use the form of an application for a permit and indicate thereon the changes requested. The manner of preparation of the application for a revision of a permit and the information submitted shall conform to the requirements of §11.92 of this title (relating to Surface Mining Permit Application) and §11.93 of this title (relating to Elements of Surface Mining Permit Application).

(2) - (5) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 5. URANIUM EXPLORATION PERMITS AND PERMIT FEES

16 TAC §§11.131 - 11.142

The Commission proposes the new rules under Texas Natural Resources Code, §131.021, which authorizes the Commission

to promulgate rules pertaining to surface uranium mining and exploration operations; Texas Natural Resources Code, §131.355, which authorizes the Commission to impose fees and mandates the fee collection authorized in House Bill 3837, 80th Legislature (2007) and House Bill 1, Article VI, Railroad Commission Rider 13, 80th Legislature (2007), which requires the Commission to assess fees sufficient to generate revenue to cover the contingent general revenue appropriation.

Statutory authority: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed new rules.

Issued in Austin, Texas on October 22, 2009.

§11.131. Uranium Exploration Permit: General Provisions.

(a) A person may not conduct any uranium exploration activity unless the person holds an exploration permit issued by the Division.

(b) An exploration permit alone does not constitute a right to conduct uranium exploration activity. Inclusion of land within a permit boundary does not constitute authority to conduct uranium exploration activity. Permit boundaries may overlap.

(c) An exploration permit constitutes authority from the Commission to conduct uranium exploration activities in those areas covered by the permit for which the permittee has the right of entry for such activities.

(d) An exploration permit governs all disturbance of the surface and subsurface associated with determining the location, quantity, or quality of uranium deposits.

(e) A uranium exploration permit shall contain provisions to govern:

(1) locating, drilling, plugging, and abandoning exploration boreholes;

(2) casing exploration boreholes for use in the exploration process;

(3) using cased exploration wells for rig supply purposes; and

(4) plugging and abandoning cased exploration wells.

(f) Except as provided in §11.140 of this title (relating to Commission and Groundwater Conservation District Jurisdiction), a cased exploration well subject to an exploration permit is exempt from regulation by another agency, government entity, or political subdivision if the well is used for exploration or rig supply purposes.

(g) A uranium exploration permit shall be valid for a period of 12 months from the date of issuance and may be renewed pursuant to §11.134 of this title (relating to Uranium Exploration Permit Renewal).

(h) Upon completion of all exploration activity, each permittee shall renew its uranium exploration permit for an additional permit term or terms until the permittee:

(1) properly plugs all exploration boreholes and cased exploration wells and files with the Division a plugging affidavit as required by §11.139 of this title (relating to Uranium Exploration Drill Site Plugging and Reporting Requirements); and

(2) with respect to all cased exploration wells that are not plugged, either:

(A) registers all such wells with the Texas Commission on Environmental Quality; or

(B) includes all such wells in an area permit issued by the Texas Commission on Environmental Quality under Texas Water Code, Chapter 27.

§11.132. Application to Conduct Uranium Exploration Activity.

(a) Each applicant shall apply for a uranium exploration permit by filing with the Division a completed Form SMRD-3U (Application to Conduct Uranium Exploration Activities by Drilling) and paying the Commission the applicable fee or fees as required by §11.136 of this title (relating to Uranium Exploration Permit Fees).

(b) The application shall contain the following information necessary for the Division to provide notice pursuant to §11.137 of this title (relating to Commission Notice of Uranium Exploration Permit Application, Issuance, and Denial):

(1) the name, mailing and street addresses, and telephone number of the applicant;

(2) the name, mailing and street addresses, and telephone number of the applicant's representative that will be responsible for conducting the exploration activity;

(3) the name of each county in which the exploration activity is proposed, along with the following contact information by name, address, and telephone number:

(A) each groundwater conservation district within the area in which the exploration activity will occur;

(B) the mayor and health authority of each municipality within 10 miles in all directions of the boundary of the area in which the exploration activity will occur;

(C) the county judge and health authority of each county in which the exploration activity will occur; and

(D) each member of the Texas Legislature who represents the area in which the exploration activity will occur;

(4) the names and addresses of all landowners of record of the surface of the exploration permit area, indexed to the land tracts identified on the map required in paragraph (6) of this subsection;

(5) the names and addresses of all mineral estate owners for which the applicant has obtained the right of entry to conduct exploration activities, indexed to the land tracts identified on the map required in paragraph (6) of this subsection;

(6) a USGS topographic map or maps (scale 1:24,000), in both paper and digital formats, showing the proposed exploration area, with the following information shown:

(A) the exploration area boundary and acreage stated to the nearest acre;

(B) the boundary of each land tract within the exploration permit area, with the tracts that the applicant has obtained the right to enter to conduct exploration activities identified; and

(C) the location of all private or public water wells that can be identified in the public record that are:

(i) within the proposed permit boundary; and

(ii) outside of but within 1,000 feet of the proposed permit boundary; and

(7) the following information:

(A) a description of the geology and hydrogeology for the proposed permit area that includes cross-sections and maps;

(B) an explanation of the exploration drilling method, including the depth of subsurface penetration and the estimated size of the surface disturbance;

(C) an estimate of the number of exploration boreholes to be drilled during the permit term and the physical method for marking each borehole location for inspection;

(D) a description of the proposed plugging and well construction methods, which shall conform to the requirements of §11.138 of this title (relating to Uranium Exploration Drill Site Operating and Reclamation Requirements);

(E) a description of the proposed methods for disposing of cuttings produced by the drilling activity and preventing surface runoff from entering mud pits; and

(F) a description of the proposed procedures for leveling any disturbance caused by the drilling activity to conform to the requirements of §11.138 of this title.

(c) The application shall be signed by an authorized representative, dated, and certified, attesting to the veracity of the statements and representations in the application.

§11.133. Uranium Exploration Permit Revision.

(a) A permittee may revise a uranium exploration permit by filing with the Division a completed Form SMRD-3U (Application to Conduct Uranium Exploration Activities by Drilling) no later than 30 days prior to the proposed revision implementation date and paying the Commission the fee required by §11.136 of this title (relating to Uranium Exploration Permit Fees).

(b) The uranium exploration permit revision application shall be signed by an authorized representative, dated, and certified, and shall contain all applicable information required by §11.132 of this title (relating to Application to Conduct Uranium Exploration Activity).

(c) The permittee shall describe in the revision application any changes proposed to the exploration activity or reclamation.

(d) A uranium exploration permit revision shall not have the effect of extending the initial uranium exploration permit beyond its original 12-month term.

§11.134. Uranium Exploration Permit Renewal.

(a) A permittee shall apply for a permit renewal by filing with the Division a completed Form SMRD-3U (Application to Conduct Uranium Exploration Activities by Drilling) at least 30 days prior to the expiration of the permit term and paying the Commission the applicable fee or fees as required by §11.136 of this title (relating to Uranium Exploration Permit Fees). In the renewal application, the permittee shall describe all revisions that are proposed for the exploration activity or reclamation. The director shall issue the renewal permit based on the written findings by the director that:

(1) the permittee is meeting the terms and conditions of the existing permit; and

(2) the permittee has provided any additional or revised information required by the director.

(b) A permittee shall file an application for renewal of its uranium exploration permit if the permittee has not met the requirements of §11.131(h) of this title (relating to Uranium Exploration Permit: General Provisions).

§11.135. Uranium Exploration Permit Transfer.

(a) A permittee may request the transfer of its uranium exploration permit by filing with the Division a completed Form SMRD-5U (Application to Transfer a Uranium Exploration Permit) and paying the Commission the applicable fee or fees as required by §11.136 of this title (relating to Uranium Exploration Permit Fees). The current permittee shall identify the prospective permittee in accordance with §11.132 of this title (relating to Application to Conduct Uranium Exploration Activity).

(b) The current permittee shall include with the permit transfer application a plugging report that meets the requirements of §11.139 of this title (relating to Uranium Exploration Drill Site Plugging and Reporting Requirements) demonstrating that the permittee has completed all plugging and reclamation requirements. Any changes proposed to the permit other than the transfer of the permit to a new permittee shall be made by application for a new permit pursuant to §11.132 of this title.

§11.136. Uranium Exploration Permit Fees.

(a) Initial uranium exploration permit fee. Each applicant for a uranium exploration permit shall pay to the Commission a uranium exploration permit fee consisting of:

(1) an amount equal to $1.50 per acre for each acre included within the proposed exploration area identified on a map as part of the application pursuant to §11.132 of this title (relating to Application to Conduct Uranium Exploration Activity); plus

(2) an amount equal to $50 for each exploration borehole drilled during the 12-month permit term.

(b) Uranium exploration permit revision fee. Each applicant for a uranium exploration permit revision that proposes additional exploration area shall pay to the Commission a permit revision fee consisting of an amount equal to $1.50 per acre for each additional acre to be included within the proposed exploration area identified on a map as part of the application pursuant to §11.133 of this title (relating to Uranium Exploration Permit Revision).

(c) Uranium exploration permit renewal fee. Each applicant for a uranium exploration permit renewal shall pay to the Commission a fee consisting of:

(1) an amount equal to $1.50 per acre for each acre included within the proposed exploration area identified on a map as part of the application pursuant to §11.134 of this title (relating to Uranium Exploration Permit Renewal); plus

(2) an amount equal to $50 for each exploration borehole drilled during the 12-month permit renewal term.

(d) Uranium exploration permit transfer fee. Each applicant for the transfer of a uranium exploration permit pursuant to §11.135 of this title (relating to Uranium Exploration Permit Transfer) shall pay to the Commission a non-refundable permit transfer application fee of $500.

(e) Payment of the per-hole exploration borehole fee required pursuant to this section shall be submitted to the Commission with the monthly borehole plugging reports (Form SMRD-39U, Borehole Plugging Report, and Form SMRD-38U, Cased Exploration Well Completion Report) filed pursuant to §11.139 of this title (relating to Uranium Exploration Drill Site Plugging and Reporting Requirements).

§11.137. Commission Notice of Uranium Exploration Permit Application, Issuance, and Denial.

(a) The Division shall provide written notice to the entities listed in subsection (b) of this section of:

(1) the Division's receipt of an initial application for an exploration permit and the director's issuance or denial of an exploration permit;

(2) the Division's receipt of an application for a permit revision that adds acreage to or removes acreage from the permit area or makes a material change in the permit boundaries and the director's issuance or denial of a permit revision;

(3) the Division's receipt of an application for an exploration permit renewal and the director's issuance or denial of an exploration permit renewal; and

(4) the Division's receipt of an application for an exploration permit transfer and the director's issuance or denial of an exploration permit transfer.

(b) The Division shall give the notice required by subsection (a) of this section to the following:

(1) each groundwater conservation district within the area in which the exploration activity will occur or is occurring;

(2) the mayor and health authority of each municipality within 10 miles of the boundary of the area in which the exploration activity will occur or is occurring;

(3) the county judge and health authority of each county in which the exploration activity will occur or is occurring; and

(4) each member of the Texas Legislature who represents the area in which the exploration activity will occur or is occurring.

(c) In the written notice of receipt of an initial application for an exploration permit, the Division shall include:

(1) the name, address, and telephone number of the applicant;

(2) the name, address, and telephone number of the applicant's representative that will be responsible for conducting the exploration activity;

(3) information describing or showing the exploration area boundary covered by the application for an exploration permit; and

(4) the estimated number of exploration boreholes anticipated to be drilled during the exploration permit term.

(d) In the written notice of the issuance or denial of an exploration permit, permit revision (if required to be given by subsection (a)(2) of this section), permit renewal, or permit transfer, the Division shall include information on where a copy of the approval or denial document may be obtained.

§11.138. Uranium Exploration Drill Site Operating and Reclamation Requirements.

(a) No permittee may drill an exploration borehole within 150 horizontal feet of an existing water well without the written consent of the well owner.

(b) Each permittee shall:

(1) segregate topsoil from subsoil and salvage it while digging a mud pit;

(2) protect livestock from open mud pits; and

(3) prevent surface-water runoff from entering open mud pits.

(c) Each permittee shall ensure that reclamation of the drill site occurs as contemporaneously as practicable with the drilling activity. When drilling activities are complete, the permittee shall:

(1) allow the mud pit to dry and then backfill with native subsoil followed by topsoil, to the extent that topsoil was originally present;

(2) properly dispose of trash and other debris brought to or generated at the drill site by the permittee; and

(3) return the disturbed area to approximate original contour and appropriately revegetate.

(d) Each permittee shall notify the Division prior to any of the following to allow scheduling of inspections:

(1) when drilling operations will initially commence or recommence;

(2) when drilling will cease for greater than 30 days; and

(3) when cessation of drilling and plugging will be completed for the permit term.

§11.139. Uranium Exploration Drill Site Plugging and Reporting Requirements.

(a) Each permittee shall plug each exploration borehole within three business days of drilling completion. The permittee shall maintain records of borehole logging, cementing dates, and rig logs and make them available for inspection by the Division.

(b) Each permittee shall plug each exploration borehole in accordance with the following requirements:

(1) each borehole shall be plugged with Type-I neat cement from total depth to three feet below ground surface unless the director approves an alternative plugging method that meets the requirements of subsection (d) of this section;

(2) downhole plugs shall be emplaced using tremie tubing or drill string pipe. The remainder of the hole between the top of the plug and the ground surface shall be filled with non-toxic, non-radioactive drill cuttings or soil; and

(3) to ensure that the proper plug depth is achieved, each borehole shall be checked for settling within two business days after initial plugging. If the depth to the top of the plug is not at the required distance from the surface, additional cement or alternative plugging material, if approved, shall be added to bring the plug to the required depth.

(c) Each permittee shall physically mark each plugged borehole using the specific borehole marking method described in the permit application, and shall ensure the markings remain in place until the borehole is inspected by the Division. A permittee may use a section of poly rope, a piece of PVC pipe, or a similar device to mark the location of the borehole.

(d) A permittee may request in writing to use an alternative plugging method and materials and shall demonstrate that the alternative methods or materials will provide at least the same level of groundwater protection as Type-I neat cement to protect and prevent communication with all formations bearing fresh water and usable quality water.

(e) No later than the last day of each month, each permittee shall file a completed Form SMRD-39U (Borehole Plugging Report) with the Division showing the plugging information for each borehole plugged the previous month.

(f) Within 48 hours of drilling completion, each permittee shall install and cement casing for each exploration borehole that is to be used as a cased exploration well. Cased exploration wells shall be completed in accordance with the standards set forth in the regulations of the Texas Department of Licensing and Regulation at 16 TAC §76.1000

(relating to Technical Requirements--Locations and Standards of Completion for Wells).

(g) No later than the last day of each month, each permittee shall file with the Division a completed Form SMRD-38U (Cased Exploration Well Completion Report) showing the completion information for each exploration well cased the previous month.

(h) Each permittee shall plug boreholes or install casing in boreholes during the permit term.

§11.140. Commission and Groundwater Conservation District Jurisdiction.

(a) The Commission has jurisdiction over uranium exploration boreholes and cased exploration wells completed under an exploration permit until:

(1) exploration boreholes and cased exploration wells are properly plugged in accordance with §11.138 of this title (relating to Uranium Exploration Drill Site Operating and Reclamation Requirements); or

(2) cased exploration wells are either:

(A) registered with the Texas Commission on Environmental Quality; or

(B) included in an area permit issued by the Texas Commission on Environmental Quality under Texas Water Code, Chapter 27.

(b) Each permittee shall register each cased exploration well with the Texas Commission on Environmental Quality pursuant to the requirements in 30 TAC §331.221 (relating to Registration of Wells).

(c) A well described in §11.131(f) of this title (relating to Uranium Exploration Permit: General Provisions) is subject to a groundwater conservation district's rules regarding registration of wells if:

(1) the well is located in the groundwater conservation district and is used for monitoring purposes; and

(2) the cumulative amount of water produced from the wells located inside the area subject to and completed under the exploration permit issued exceeds 40 acre-feet in one 12-month permit term.

(d) A well described in §11.131(f) of this title is subject to a groundwater conservation district's rules regarding registration, production, and reporting of wells if:

(1) the well is located in the groundwater conservation district and is used for rig supply purposes; and

(2) the cumulative amount of water produced from the wells located inside the area subject to and completed under the exploration permit issued exceeds 40 acre-feet in one 12-month permit term.

(e) Each month, each permittee that has installed a cased exploration well described in §11.131(f) of this title and located in a groundwater conservation district shall report to the Division and the district the total amount of water produced from each well described in §11.131(f) of this title located inside the area subject to the exploration permit. No later than the last day of each month, the permittee shall file a groundwater production report containing the following information for the previous month:

(1) well identification to correspond with information provided under §11.139(g) of this title (relating to Uranium Exploration Drill Site Operating and Reclamation Requirements); and

(2) water produced reported in gallons and acre-feet. The monthly report shall include the monthly production data and cumulative data for the 12-month permit term. Once a well begins production, monthly reports will be required even if production temporarily ceases, until the end of the 12-month permit term.

§11.141. Groundwater Quality and Well Information.

(a) At least 15 days prior to commencement of drilling, a permittee whose permit authorizes exploration in a groundwater conservation district shall obtain groundwater samples for analysis in accordance with this subsection. Within 90 days of receiving the laboratory analysis data, the permittee shall provide to the district pre-exploration groundwater quality information as follows:

(1) from each existing well located in a groundwater conservation district that is tested by the permittee before exploration; and

(2) from the following wells, as applicable:

(A) if there are fewer than 10 existing wells located inside the approved exploration area, from each well located inside the approved exploration area; or

(B) if there are at least 10 existing wells located inside the approved exploration area, from 10 existing wells that are distributed as evenly as possible throughout that area.

(b) Within 90 days of receiving the laboratory analysis data, a permittee whose permit authorizes exploration in a groundwater conservation district shall provide to the district groundwater quality information obtained during exploration within the district as follows:

(1) from each existing well that the permittee tests during exploration; and

(2) from each cased exploration well completed under the exploration permit.

(c) Each permittee shall conform the groundwater quality information required under subsections (a) and (b) of this section to the requirements of §11.142 of this title (relating to Groundwater Analysis and Reporting).

(d) Each permittee whose permit authorizes exploration in a groundwater conservation district shall file with the Division the groundwater quality information required under subsections (a) and (b) of this section at the same time the information is provided to the district.

(e) Each exploration permittee that installs cased exploration wells inside a groundwater conservation district shall provide to the district, within 60 days of the installation, the following information:

(1) the permittee's name, address, and telephone number; and

(2) the following information for each cased exploration well in the district:

(A) well completion information;

(B) well logs, except any information determined by the director to be confidential pursuant to §11.74 of this title (relating to Information Subject to Public Review);

(C) the location of the well, including a legal description and the acreage of the property where the well is located;

(D) verification that the well will be used for an industrial purpose; and

(E) the type and capacity of the pump used in the well.

§11.142. Groundwater Analysis and Reporting.

(a) Each exploration permittee shall perform groundwater quality testing required under §11.141(a) and (b) of this title (relating to Groundwater Quality and Well Information) for the parameters listed in Table 1. Each permittee shall ensure that analyses are conducted in accordance with protocols set forth in *Standard Methods for Examination of Water and Wastewater,* 2005, 21st edition; *Methods for Chemical Analysis of Water and Wastes,* 1979, (EPA-600/4-79-020); and *Test Methods: Technical Additions to Methods for Chemical Analysis of Water and Wastes,* 1982, (EPA-600/4-82-055).
Figure: 16 TAC §11.142(a)

(b) In addition to reporting the analytical results as required by §11.141 of this title, each permittee shall report to the Division and to the groundwater conservation district the following information:

(1) a water level from each cased exploration well completed under the exploration permit and from existing wells identified in §11.141 of this title, if the permittee determines it is possible to obtain a water level without pulling the pump or risking damage to the well; and

(2) analysis sheets from the laboratory containing:

(A) name, address, and telephone number of the analytical laboratory;

(B) date of sample collection;

(C) date of sample receipt by the laboratory;

(D) date of laboratory analysis/report;

(E) laboratory sample identification;

(F) name and signature of laboratory personnel responsible for the analysis; and

(G) the analysis results.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 22, 2009.

TRD-200904822
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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DIVISION 6. URANIUM SURFACE MINING RECLAMATION

16 TAC §§11.151 - 11.153

The Commission proposes the amendments under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations; Texas Natural Resources Code, §131.355, which authorizes the Commission to impose fees and mandates the fee collection authorized in House Bill 3837, 80th Legislature (2007) and House Bill 1, Article VI, Railroad Commission Rider 13, 80th Legislature (2007), which requires the Commission to assess fees sufficient to generate revenue to cover the contingent general revenue appropriation.

Statutory authority: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed amendments.

Issued in Austin, Texas on October 22, 2009.

§11.151. Surface Mining Reclamation Plan.
A reclamation plan, which is an essential element of the surface mining permit application, shall be developed in a manner consistent with local, physical, environmental, and climatological conditions and current mining and reclamation technologies and shall include where applicable the following information:

(1) - (6) (No change.)

§11.152. Surface Mining Reclamation Standards.
The operator of all surface mining and reclamation operations not otherwise exempted or excluded shall as a minimum:

(1) (No change.)

(2) restore the land affected to the same or a substantially beneficial condition considering the present and past uses of the land, so long as condition does not present any actual or probable hazard to public health or safety or pose an actual or probable threat of water diminution or pollution, and the operator's declared anticipated land use following reclamation is not deemed to be impractical or unreasonable, to involve unreasonable delay in implementation, or to be violative of federal, state, or local law; provided that a variety of post-mining land conditions which differ from the land condition immediately preceding the surface mining operation, including but not limited to stock ponds, fishing or recreational lakes, school or park sites, industrial, commercial, or residential sites, or open space uses, may be approved by the Commission if the proposed condition is determined to be substantially beneficial and complies with the provisions of this division [~~§§11.151-11.154 of this title~~] (relating to Uranium Surface Mining Reclamation);

(3) - (10) (No change.)

(11) with respect to the use of impoundments for the disposal of mine wastes, processing wastes, or other liquid or solid wastes, incorporate current engineering practices for the design and construction of water retention facilities which, at a minimum, shall be compatible with the requirements of Texas Water Code §12.052 [~~§6.0731~~], and applicable federal laws, insure that leachate will not pollute surface or groundwater, and locate impoundments so as not to endanger public health and safety should failure occur;

(12) - (18) (No change.)

(19) with respect to permanent impoundments of water as a part of the approved reclamation plan, insure that:

(A) (No change.)

(B) the impoundment dam construction will meet the requirements of Texas Water Code §12.052 [~~§6.0731~~], and applicable federal laws;

(C) - (E) (No change.)

(20) - (28) (No change.)

(29) with respect to pipelines transmitting crude oil, liquid petroleum, natural gas, toxic, or flammable substances:

(A) - (E) (No change.)

(F) comply with the requirements of Texas Natural Resources Code, Chapter 117; Texas Utilities Code, Chapter 121; Commission pipeline safety rules in 16 TAC Chapter 8; federal pipeline safety requirements in 49 USC §§60101, et seq.; and federal pipeline safety rules in 49 CFR Part 191, Transportation of Natural and Other Gas by Pipeline: Annual Reports, Incident Reports, and Safety-Related Condition Reports; 49 CFR Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; and 49 CFR Part 193, Liquefied Natural Gas Facilities: Federal Safety Standards; [~~comply with rules and regulations pursuant to Texas Civil Statutes Article 6053-1, regarding safety regulations for gas pipeline facilities; Texas Railroad Commission, Gas Utilities Docket Number 446 (December 31, 1970); 40 CFR §§191, 192, and 195;~~] and

(G) (No change.)

§11.153. Alternative Methods.

A method of reclamation other than that provided in §11.151 of this title (relating to Surface Mining Reclamation Plan) and §11.152 of this title (relating to Surface Mining Reclamation Standards) may be approved by the commission after public hearing, if the commission determines that any method of reclamation required by this section is not practicable and that such alternative method will provide for the affected land to be restored to a substantially beneficial condition.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Mary Ross McDonald
Managing Director
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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DIVISION 8. MINE CLOSING AND RELEASE

16 TAC §11.181, §11.182

The Commission proposes the amendments under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations; Texas Natural Resources Code, §131.355, which authorizes the Commission to impose fees and mandates the fee collection authorized in House Bill 3837, 80th Legislature (2007) and House Bill 1, Article VI, Railroad Commission Rider 13, 80th Legislature (2007), which requires the Commission to assess fees sufficient to generate revenue to cover the contingent general revenue appropriation.

Statutory authority: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed amendments.

Issued in Austin, Texas on October 22, 2009.

§11.181. Surface Mine Closing.
Any incremental part of a mining operation for which a separate bond has been submitted will be considered as closed for the purposes of these sections at such time as the operator demonstrates the following to the commission:

(1) that all the requirements of Division 6 of this subchapter [~~§§11.151-11.154 of this title~~] (relating to Uranium Surface Mining Reclamation) have been met;

(2) (No change.)

§11.182. Surface Mine Release.
Upon the fulfillment of the requirements set forth in §11.181 of this title (relating to Surface Mine Closing), the operator will be released from further responsibility for activities and reports required by these sections. The operator will be notified in writing by the commission upon such release, which notification shall be a prerequisite to final release of bond under §§11.201-11.206 of this title (relating to Performance Bonds).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Mary Ross McDonald
Managing Director
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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DIVISION 9. REPORTS AND REPORTING

16 TAC §11.194

The Commission proposes the amendments under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations; Texas Natural Resources Code, §131.355, which authorizes the Commission to impose fees and mandates the fee collection authorized in House Bill 3837, 80th Legislature (2007) and House Bill 1, Article VI, Railroad Commission Rider 13, 80th Legislature (2007), which requires the Commission to assess fees sufficient to generate revenue to cover the contingent general revenue appropriation.

Statutory authority: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed amendments.

Issued in Austin, Texas on October 22, 2009.

§11.194. Release from Reporting Requirement.
Surface mining operations conducted at any individual mine shall be reported in the annual report until such time as the mine is closed pur-

suant to the provisions of §§11.181-11.182 of this title (relating to Surface Mine Closing and Surface Mine Release).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 22, 2009.

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Mary Ross McDonald
Managing Director
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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DIVISION 10. PERFORMANCE BONDS

16 TAC §11.203, §11.206

The Commission proposes the amendments under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations; Texas Natural Resources Code, §131.355, which authorizes the Commission to impose fees and mandates the fee collection authorized in House Bill 3837, 80th Legislature (2007) and House Bill 1, Article VI, Railroad Commission Rider 13, 80th Legislature (2007), which requires the Commission to assess fees sufficient to generate revenue to cover the contingent general revenue appropriation.

Statutory authority: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed amendments.

Issued in Austin, Texas on October 22, 2009.

§11.203. Duration of Liability.

Liability under the bond shall be for the duration of surface mining and reclamation operations and for a period coincident with the operator's responsibility pursuant to §§11.181-11.182 of this title (relating to Surface Mine Closing and Surface Mine Release).

§11.206. Release or Reduction of Bonds.

(a) - (b) (No change.)

(c) The commission may release in whole or in part said bond or deposit if it is satisfied that reclamation covered by the bond or deposit or portion thereof has been accomplished as required by the approved reclamation plan according to the following schedule.

(1) (No change.)

(2) When the operator has successfully completed the remaining reclamation activities, but not before the expiration of the period specified for operator responsibility in §§11.181-11.182 of this title (relating to Surface Mine Closing and Surface Mine Release), release the remaining portion of the bond or substitute collateral; provided, however, that no bond shall be fully released until all reclamation requirements of the approved reclamation plan are fully met.

(d) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Mary Ross McDonald
Managing Director
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SUBCHAPTER C. SUBSTANTIVE RULES--URANIUM MINING
DIVISION 5. EXPLORATION ACTIVITIES

16 TAC §§11.131 - 11.139

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Railroad Commission of Texas (Commission) proposes the repeal of §§11.131 - 11.139, related to Notice of Exploration through Overburden Removal, Content of Notice, Extraction of Minerals, Removal of Minerals, Lands Unsuitable for Surface Mining, Notice of Exploration Involving Hole Drilling, Permit, Reclamation and Plugging Requirements, and Reporting, as part of a comprehensive rulemaking proceeding to implement the Commission's statutory authority for uranium exploration enacted by House Bill 3837, 80th Legislature (2007). In a separate, concurrent rulemaking, the Commission is proposing corresponding new rules §§11.131 - 11.142, to address HB 3837.

John Caudle, Director, Surface Mining and Reclamation Division, has determined that during each year of the first five years the proposed repeals would be in effect, the net fiscal effect on state government will be zero. The purpose of the proposed repeals, in conjunction with the proposed amendments and new rules in the separate, concurrent rulemaking, is to clarify several existing rules and to promulgate more comprehensive rules regarding uranium exploration by drillhole pursuant to the expanded statutory authority enacted in HB 3837. The Commission does not anticipate that the repeals will result in either an increase or decrease in the total number of uranium exploration permit applications filed with the Commission. There will be no fiscal impact on local governments.

Mr. Caudle has determined that during each year of the first five years the proposed repeals would be in effect, they will have no economic cost to the mining industry.

Mr. Caudle has determined that the public benefit resulting from the proposed repeals will be the clarification of the requirements and standards that apply to uranium exploration activity.

Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic Effect, directs that, as part of the rulemaking process, a state agency prepare an Economic

Impact Statement that assesses the potential impact of a proposed rule on small businesses and micro-businesses, and a Regulatory Flexibility Analysis that considers alternative methods of achieving the purpose of the rule if the proposed rule will have an adverse economic effect on small businesses or micro-businesses. The Commission has determined that the proposed repeals will not have any economic impact on any affected entity, regardless of its classification as a small business or a micro-business, and therefore there is no need to prepare an Economic Impact Statement or a Regulatory Flexibility Analysis for this rule proposal.

The proposed repeals will not affect a local economy; therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code, §2002.022.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at http://www.rrc.state.tx.us/rules/commentform.php; or by electronic mail to rulescoordinator@rrc.state.tx.us and should refer to SMRD Docket No. 01-09. Comments will be accepted until 5:00 p.m. on Monday, December 7, 2009, which is 31 days after publication in the *Texas Register.* The Commission finds that this comment period is reasonable because the proposal, as well as an online comment form, will be available on the Commission's web site no later than the day after the open meeting at which the Commission approves publication of the proposal, giving interested persons more than two additional weeks to review, analyze, and draft and submit comments. Further, the initial draft version of this proposal was the subject of a stakeholders' meeting, at which the Commission staff received input regarding the draft proposal. As a result of that meeting, the staff made some changes to the draft before presenting it to the Commission to request approval to publish the proposal in the *Texas Register* for formal comment. The Commission directed that additional revisions be made, and those have been incorporated into the current proposal.

The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call John Caudle, Director, Surface Mining and Reclamation Division, at (512) 463-6900. The status of all Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.php.

The Commission proposes the repeals under Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007), which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations.

Statutory authority: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed repeals.

Issued in Austin, Texas on October 22, 2009.

§11.131. Notice of Exploration through Overburden Removal.
§11.132. Content of Notice.
§11.133. Extraction of Minerals.
§11.134. Removal of Minerals.
§11.135. Lands Unsuitable for Surface Mining.
§11.136. Notice of Exploration Involving Hole Drilling.
§11.137. Permit.
§11.138. Reclamation and Plugging Requirements.
§11.139. Reporting.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Mary Ross McDonald
Managing Director
Railroad Commission of Texas
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CHAPTER 12. COAL MINING REGULATIONS
SUBCHAPTER G. SURFACE COAL MINING AND RECLAMATION OPERATIONS, PERMITS, AND COAL EXPLORATION PROCEDURES SYSTEMS
DIVISION 2. GENERAL REQUIREMENTS FOR PERMITS AND PERMIT APPLICATIONS

16 TAC §12.108

The Railroad Commission of Texas (Commission) proposes to amend §12.108, relating to Permit Fees, to implement provisions of Senate Bill 1, 81st Texas Legislature, Regular Session (2009), and, specifically, Article VI, Railroad Commission Rider 10, which makes the amounts appropriated from general revenue for State Fiscal Years 2010 and 2011 to cover the cost of permitting and inspecting coal mining facilities contingent upon the Commission assessing fees sufficient to generate, during the 2010-2011 biennium, revenue to cover the general revenue appropriation.

The Commission proposes to amend the fees set forth in subsection (b) as follows. In paragraph (1), the Commission proposes to decrease the annual fee for each acre of land within a permit area on which coal or lignite was actually removed during a calendar year from the current $150 to $130. In paragraph (2), the Commission proposes to increase the annual fee for each acre of land within a permit area covered by a reclamation bond on December 31st of each year, as shown on the map required at §12.142(2)(C) of this chapter (relating to Operation Plan: Maps and Plans), from the current $3.75 to $5.50. Finally, in paragraph (3), the Commission proposes to increase the annual fee for each permit in effect on December 31st of a year from the current $4,200 to $4,250. The Commission anticipates that annual fees at these new amounts will result in revenue of $1,467,500 in each year of the 2010-2011 biennium.

John Caudle, Director, Surface Mining and Reclamation Division, has determined that during each year of the first five years

the proposed amendments would be in effect, the net effect on state government will be zero. The Commission's coal mining regulatory program is partially funded with a fifty percent cost reimbursement grant from the United States Department of the Interior, Office of Surface Mining Reclamation and Enforcement. The State's share of the cost for implementing this regulatory program, $1,550,000, is funded from fees paid by the regulated coal mining industry. These fees come from two general categories: application fees and annual fees. The application fees are specified in subsection (a); the Commission does not propose to revise these fees in this rulemaking.

The total amount in annual fees required to fund this regulatory program was determined by subtracting the total amount of application fees estimated for collection in Fiscal Year 2009 from the estimated state share cost to fund the program in Fiscal Year 2009. Mr. Caudle estimates that the Commission will collect application fees in the amount of $100,000 in Fiscal Year 2009. The remainder in State share expense is then allocated for collection from annual fees. The total amount of annual fees required is allocated for collection according to the following distribution: seven percent for annual permit fees, 27 percent for mined acreage fees, and 66 percent for bonded acreage fees. The proposed annual fee rates were then derived based on the estimated area where coal or lignite will be removed during 2009 and the estimated permit status and bonded acres on December 31, 2009.

The seven percent to be collected from annual permit fees ($102,000) was divided by 24, the estimated number of permits on December 31, 2009, to derive the $4,250 individual permit annual fee proposed in subsection (b)(3). The 27 percent to be collected from mined acreage fees ($403,000) was allocated across 3,100 acres, the estimated cumulative number of acres within the permit areas on which coal or lignite will be removed during the calendar year 2009 to derive the $130 acreage fee proposed in subsection (b)(1). Last, the remaining 66 percent to be collected through the bonded acreage fee ($962,500) was divided by 175,000 acres, the estimated cumulative number of acres under bond on December 31, 2009, to derive the $5.50 per bonded acre fee proposed in subsection (b)(2).

Mr. Caudle has determined that during each year of the first five years the proposed amendments would be in effect, the proposed amendments will increase the economic cost to the mining industry as a whole by approximately $145,450. This is based on a comparison of the revenue that would be generated under the current $150 annual mined acreage fee with the revenue that would be produced by the proposed reduction of this fee to $130 per mined acre; a comparison of the revenue produced by the current annual fee of $3.75 per bonded acre with the revenue that would be produced by the proposed increase to $5.50 per bonded acre; and a comparison of the revenue produced by the current annual fee of $4,200 per permit with the revenue that would be produced by the proposed increased amount of $4,250 per issued permit, for each of 24 permits issued. There are no fiscal impacts for local governments.

Mr. Caudle has determined that the public benefit resulting from the new fee structure for coal mining activities is the alignment of fees paid by the coal mining industry with the costs incurred by the Railroad Commission, as required by Senate Bill 1.

In accordance with Texas Government Code, §2006.002, Mr. Caudle has determined that there will be no adverse economic effects on small businesses or micro-businesses because of the proposed amendments because there are no small businesses or micro-businesses, as those terms are defined in Texas Government Code, §2006.001, holding coal mining permits from the Commission. The proposed amendments also will not affect a local economy; therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code, §2002.022.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at http://www.rrc.state.tx.us/rules/commentform.php; or by electronic mail to rulescoordinator@rrc.state.tx.us and should refer to SMRD Docket No. 2-09. Comments will be accepted for 14 days after publication in the *Texas Register,* which the Commission has determined is a reasonable opportunity for interested persons to submit data, views, or arguments, as required by Texas Government Code, §2001.029.

Based on a formula and schedule agreed to by the coal mining industry and the Commission in 2005, every two years since 2005, the Commission has adjusted the surface mining fees based on that predetermined formula. This adjustment phases in fee changes based on bonded acreage for each permit as of December 31 of each year. At the same time, the fee for mined acreage correspondingly decreases and a revised annual permit fee is set based on this formula. This adjustment in fees is designed to take place over a ten-year period; this would be the third adjustment to the fee schedule.

In addition, the Commission finds that a 14-day comment period is reasonable because the proposal as well as an online comment form will be available on the Commission's web site no later than the day after the open meeting at which the Commission approves publication of the proposal, giving interested persons over two additional weeks to review, analyze, draft, and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call John Caudle, Director, Surface Mining and Reclamation Division, at (512) 463-6901. The status of the Commission rulemakings in progress is available at http://wwww.rrc.state.tx.us/rules/proposed.php.

The Commission proposes the amendments under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations; and §134.055, which authorizes the Commission to obtain annual fees and mandates the fee structure in §12.108; and Senate Bill 1, 81st Texas Legislature, Regular Session (2009), Article VI, Railroad Commission Rider 10, which requires the Commission to assess fees sufficient to generate during the 2009-2010 biennium, revenue to cover the general revenue appropriations.

Texas Natural Resources Code, §134.013 and §134.055, are affected by the proposed amendments.

Statutory authority: Texas Natural Resources Code, §134.013 and §134.055; Senate Bill 1, 81st Texas Legislature, Regular Session (2009).

Cross-reference to statute: Texas Natural Resources Code, §134.013 and §134.055; Senate Bill 1, 81st Texas Legislature, Regular Session (2009).

Issued in Austin, Texas, on October 22, 2009.

§12.108. Permit Fees.

(a) (No change.)

(b) Annual Fees. In addition to application fees required by this section, each permittee shall pay to the Commission the following annual fees due and payable not later than March 15th of the year following the year for which these fees are applicable:

(1) a fee in the amount of $130 [~~$150~~] for each acre of land within the permit area on which coal or lignite was actually removed during the calendar year;

(2) a fee of $5.50 [~~$3.75~~] for each acre of land within a permit area covered by a reclamation bond on December 31st of the year, as shown on the map required by §12.142(2)(C) of this chapter (relating to Operation Plan: Maps and Plans); and

(3) a fee of $4,250 [~~$4,200~~] for each permit in effect on December 31st of the year.

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 22, 2009.

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Mary Ross McDonald
Managing Director
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 66. REGISTRATION OF PROPERTY TAX CONSULTANTS

16 TAC §66.20

The Texas Department of Licensing and Regulation ("Department") proposes amendments to §66.20 regarding the property tax consultant program.

The proposed amendments implement changes delineated in House Bill ("HB") 2591, 81st Legislature, Regular Session, 2009, and changes recommended by the Property Tax Consultant Advisory Council ("Council") to improve the education process for new property tax consultant registrants. This rule change is proposed under the authority of Texas Occupations Code §1152.051 which mandates that the Executive Director by rule establish standards for registrants.

HB 2591 requires the Department to establish an exam for property tax consultants and its standard for passing. The proposed amendments under §66.20 fulfill that mandate by establishing the exam and passing score of success at 70%. Additionally, proposed rule §66.20(d) further designates that the 40 hours of education required for registration under HB 2591 include not only the statutorily mandated four hours of instruction in laws and rules but increases that class requirement to eight hours. It also designates that the mandated 40 hours of class time include sixteen hours of appraisal and valuation, eight hours of property tax consulting, and eight hours of ethics.

The substance of this rule change was recommended by the Council at its meeting on October 22, 2009. Other non-substantive grammatical and editorial changes are proposed.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no direct cost to state or local government as a result of enforcing or administering the proposed amendments.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed amendments are in effect, the public benefit will be added protection for the public health and safety by clarifying and further defining statutory education requirements for property tax consultants.

There is no anticipated adverse economic effect on small or micro-businesses or to persons who are required to comply with the rule as proposed. While the requirements to take an exam and complete 40 hours of education for initial property tax consultant registration may have some costs affiliated with them, these requirements and their consequential costs are mandated by statute not rule. The rule proposed to implement these legislative goals involve minimal additional cost. The Department believes that this cost would not be significant and would not adversely impact registrants. Since the agency has determined that the rule will have no adverse economic effect on small or micro-businesses preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Caroline Jackson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, §51.201(b) and §51.203, which authorize the Texas Commission of Licensing and Regulation ("Commission"), the Department's governing body, to adopt rules as necessary to implement Chapter 51 and any other law establishing a program regulated by the Department. Also, the amendments are proposed under Texas Occupations Code, §1152.051 which authorizes the Executive Director of the Department and the Commission to adopt rules as necessary to establish standards for registrants.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 1152. No other statutes, articles, or codes are affected by the proposal.

§66.20. Registration Requirements.

(a) To register or renew a registration, a person must file a completed application on a form provided by the department and pay the applicable fees.

(b) An applicant for a senior property tax consultant registration must pass a department-approved examination for senior property tax consultants. The standard for passing the senior property tax consultant examination shall be a score of at least 70%.

(c) An applicant for a property tax consultant registration must pass a department-approved examination for property tax consultants. The standard for passing the property tax consultant examination shall be a score of at least 70%.

(d) To be eligible for an original property tax consultant registration, a person must successfully complete at least 40 classroom hours of education including:

(1) eight hours on the laws and rules relating to property tax consulting;

(2) sixteen hours on appraisal and valuation;

(3) eight hours on property tax consulting; and

(4) eight hours on ethics.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
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CHAPTER 87. USED AUTOMOTIVE PARTS RECYCLERS

16 TAC §§87.1, 87.10, 87.15, 87.20 - 87.26, 87.30, 87.40, 87.44 - 87.47, 87.50, 87.65, 87.70 - 87.81, 87.85, 87.90 - 87.92

The Texas Department of Licensing and Regulation ("Department") proposes new rules at 16 Texas Administrative Code, Chapter 87, §§87.1, 87.10, 87.15, 87.20 - 87.26, 87.30, 87.40, 87.44 - 87.47, 87.50, 87.65, 87.70 - 87.81, 87.85, and 87.90 - 87.92, regarding the licensing and regulation of used automotive parts recyclers and used automotive parts employees engaged in the buying of vehicles and the selling of used automotive parts. These rules are necessary to implement Senate Bill 1095, 81st Legislature, Regular Session, 2009.

New §87.1 provide the authority under which the proposed rules are authorized.

New §87.10 defines the following terms in the proposed rules: casual sales, commission, component, department, insurance company, interior component part, major component part, metal recycler, motor vehicle, minor component part, nonrepairable motor vehicle, nonrepairable vehicle title, salvage motor vehicle, salvage vehicle title, salvage vehicle dealer, special accessory part, used automotive part, used automotive parts recycler, and used automotive parts recycling.

New §87.15 establishes the requirements for approval, issuance and denial of license applications.

New §87.20 provides the requirements for licensing used automotive parts recycling businesses.

New §87.21 establishes the eligibility requirement for licensing used automotive parts recycling businesses.

New §87.22 establishes the application requirements for licensing used automotive parts recycling businesses.

New §87.23 establishes the requirement for renewing used automotive parts recycling businesses licenses.

New §87.24 provides that a used automotive parts recycling employee license is required for all employees engaged in the buying of vehicles and the selling of used automotive parts.

New §87.25 provides the requirements for obtaining a used automotive parts recycling employee license.

New §87.26 establishes the requirement for renewing used automotive parts recycling employee licenses.

New §87.30 identifies business activity that is exempted from the requirement of the proposed new rules.

New §87.40 establishes the minimum insurance requirement to license and operate used automotive parts recycling businesses.

New §87.44 provides the general requirements for conducting inspections of used automotive parts recycling businesses.

New §87.45 requires the bi-annual inspection of each licensed business and requires the cooperation of the business with agency inspectors during the inspection.

New §87.46 identifies conditions under which a licensed business will be subject to additional inspections, the frequency of such additional inspection, and the requirements leading to termination of the additional inspections with return to a bi-annual inspection schedule.

New §87.47 establishes the procedures for notification by the inspector of steps that must be taken by the licensee and compliance by the licensee with those steps to bring the business in compliance with these rules.

New §87.50 requires the used automotive parts recycling business to file reports with the Texas Department of Motor Vehicles each time it acquires a used vehicle for recycling of parts.

New §87.65 establishes the composition and responsibilities of the advisory board.

New §87.70 provides that licensees are required to obtain ownership documents from the previous vehicle owner for each salvage vehicle obtained for recycling.

New §87.71 states that licensees shall maintain records or of sales receipts for each motor vehicle and used automotive part purchased.

New §87.72 obligates the licensee before moving the licensed business to notify the department of the new location.

New §87.73 requires the licensee to remove and secure the license plate from each motor vehicle acquired by the business.

New §87.74 prohibits licensees from dismantling or disposing of motor vehicles prior to obtaining a certificate of title.

New §87.75 establishes the requirement for keeping records and inventory related to component parts acquired by the licensee.

New §87.76 provides that licensees must keep parts at least three days after acquisition of the part.

New §87.77 requires that records under this chapter be maintained for one year.

New §87.78 identifies which document must be surrendered by the licensee to the Texas Department of Motor Vehicles.

New §87.79 subjects a licensed facility to inspection by law enforcement.

New §87.80 requires licensees to maintain records of casual sales authorized by the rules.

New §87.81 restricts the hours during which heavy equipment may be operated in counties meeting minimum population thresholds.

New §87.85 sets fees related to licensing of business and certain employees required to be licensed under these rules.

New §87.90 provides for administrative penalties and other sanctions for violation of these rules.

New §87.91 states the authority of the Commission and the Department to use the enforcement authority granted under Chapters 51 and 2309.

New §87.92 authorizes the executive director to issue cease and desist orders to persons violating these rules.

William H. Kuntz, Jr., Executive Director of the Department, has determined that for each year of the first five-year period the new rules are in effect, there will be costs to the Department to enforce and administer these rules. The expected cost is approximately $450,000 per year. Fees, which are included in the rules, have been set to generate revenues sufficient to cover these costs. There is no anticipated fiscal implication for units of local government.

Mr. Kuntz has determined that for each year of the first five-year period the new rules are in effect, the public benefit will be the licensing of used automotive parts recyclers and employees engaged in the buying of vehicles and the selling of parts by identifying those entities and persons qualified to provide the service. In addition, the rules will more clearly define the requirements for operating a used automotive parts recycling business and obligations of licensed employees which will provide consumer protections for individuals who purchase used automotive parts.

Mr. Kuntz also has determined that for each year of the first five-year period the new rules are in effect, there will be no new economic costs imposed on businesses that are required to register under these new rules. Businesses currently engaged in the used automotive parts recycler business currently incur registration fees, annual renewal registration fees, insurance premiums, expenses for maintaining records and filing reports with the Department of Motor Vehicles. Persons required to obtain a license under the new employee licensing requirements will be subject to new fees; however, those fees are imposed by statute and not a result of this chapter. The new employee licensing requirements are applicable to individuals and not to small and micro businesses. In drafting the rules, the Department has tried to minimize any adverse economic effect by allowing for electronic registration and adopting requirements consistent with those in effect while the industry was under the jurisdiction and regulation of the Texas Department of Transportation. There is no anticipated negative impact on local employment.

Comments on the proposal may be submitted by mail to Caroline Jackson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; by facsimile to (512) 475-3032; or by email to erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register.*

The new rules are proposed under Texas Occupations Code, Chapter 2309 which directs the Department's governing body, the Commission, to adopt rules to implement the used automotive parts program, and Texas Occupations Code, Chapter 51, which authorizes the Commission to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 2309, and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the proposal.

§87.1. Authority.

This chapter is promulgated under the authority of the Texas Occupations Code, Chapter 51 and Chapter 2309.

§87.10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise, or the words or terms conflict with a definition in the Transportation Code, §501.002 or §501.091.

(1) Casual sale--The sale by a salvage vehicle dealer or an insurance company of not more than five nonrepairable motor vehicles or salvage motor vehicles to the same person during a calendar year. The term does not include:

(A) a sale at auction to a salvage vehicle dealer; or

(B) the sale of an export-only motor vehicle to a person who is not a resident of the United States.

(2) Commission--The Texas Commission of Licensing and Regulation.

(3) Component part--A major component part as defined by Transportation Code, §501.091, or a minor component part.

(4) Department--The Texas Department of Licensing and Regulation.

(5) Executive director--The executive director of the department.

(6) Insurance company--

(A) a person authorized to write automobile insurance in this state; or

(B) an out-of-state insurance company that pays a loss claim for a motor vehicle in this state.

(7) Interior component part--A motor vehicle's seat or radio.

(8) Major component part--One of the following parts of a motor vehicle:

(A) the engine;

(B) the transmission;

(C) the frame;

(D) a fender;

(E) the hood;

(F) a door allowing entrance to or egress from the passenger compartment of the motor vehicle;

(G) a bumper;

(H) a quarter panel;

(I) a deck lid, tailgate, or hatchback;

(J) the cargo box of a one-ton or smaller truck, including a pickup truck;

(K) the cab of a truck;

(L) the body of a passenger motor vehicle; or

(M) the roof or floor pan of a passenger motor vehicle, if separate from the body of the motor vehicle.

(9) Metal recycler--A person who:

(A) is predominately engaged in the business of obtaining ferrous or nonferrous metal that has served its original economic purpose to convert the metal, or sell the metal for conversion, into raw material products consisting of prepared grades and having an existing or potential economic value;

(B) has a facility to convert ferrous or nonferrous metal into raw material products consisting of prepared grades and having an existing or potential economic value, by method other than the exclusive use of hand tools, including the processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content of the metal; and

(C) sells or purchases the ferrous or nonferrous metal solely for use as raw material in the production of new products.

(10) Minor component part--An interior component part, a special accessory part, or a motor vehicle part that displays or should display at least one of the following:

(A) a federal safety certificate;

(B) a motor number;

(C) a serial number or a derivative; or

(D) a manufacturer's permanent vehicle identification number or a derivative.

(11) Motor vehicle--

(A) any motor driven or propelled vehicle required to be registered under the laws of this state;

(B) a trailer or semitrailer, other than manufactured housing, that has a gross vehicle weight that exceeds 4,000 pounds;

(C) a house trailer;

(D) an all-terrain vehicle, as defined by Transportation Code, §502.001, designed by the manufacturer for off-highway use that is not required to be registered under the laws of this state; or

(E) a motorcycle, motor-driven cycle, or moped that is not required to be registered under the laws of this state, other than a motorcycle, motor-driven cycle, or moped designed for and used exclusively on a golf course.

(12) Nonrepairable motor vehicle--A motor vehicle that:

(A) is damaged, wrecked, or burned to the extent that the only residual value of the vehicle is as a source of parts or scrap metal; or

(B) comes into this state under a title or other ownership document that indicates that the vehicle is nonrepairable, junked, or for parts or dismantling only.

(13) Nonrepairable vehicle title--A document issued by the Texas Department of Motor Vehicles that evidences ownership of a nonrepairable motor vehicle.

(14) Salvage motor vehicle--

(A) a motor vehicle that:

(i) has damage to or is missing a major component part to the extent that the cost of repairs, including parts and labor other than the cost of materials and labor for repainting the motor vehicle and excluding sales tax on the total cost of repairs, exceeds the actual cash value of the motor vehicle immediately before the damage; or

(ii) is damaged and that comes into this state under an out-of-state salvage motor vehicle certificate of title or similar out-of-state ownership document that states on its face "accident damage," "flood damage," "inoperable," "rebuildable," "salvageable," or similar notation; and

(B) does not include an out-of-state motor vehicle with a "rebuilt," "prior salvage," "salvaged," or similar notation, a nonrepairable motor vehicle, or a motor vehicle for which an insurance company has paid a claim for:

(i) the cost of repairing hail damage; or

(ii) theft, unless the motor vehicle was damaged during the theft and before recovery to the extent described by subparagraph (A)(i).

(15) Salvage vehicle dealer--A person engaged in this state in the business of acquiring, selling, dismantling, repairing, rebuilding, reconstructing, or otherwise dealing in nonrepairable motor vehicles, salvage motor vehicles, or used parts. The term does not include a person who casually repairs, rebuilds, or reconstructs fewer than three salvage motor vehicles in the same calendar year. The term includes a person engaged in the business of:

(A) a salvage vehicle dealer, regardless of whether the person holds a license issued by the Texas Department of Motor Vehicles to engage in that business;

(B) dealing in nonrepairable motor vehicles or salvage motor vehicles, regardless of whether the person deals in used parts; or

(C) dealing in used parts regardless of whether the person deals in nonrepairable motor vehicles or salvage motor vehicles.

(16) Salvage vehicle title--A document issued by the Texas Department of Motor Vehicles that evidences ownership of a salvage motor vehicle.

(17) Special accessory part--A motor vehicle's tire, wheel, tailgate, or removable glass top.

(18) Used automotive part--A part that is salvaged, dismantled, or removed from a motor vehicle for resale as is or as repaired. The term includes a major component part but does not include a rebuildable or rebuilt core, including an engine, block, crankshaft, transmission, or other core part that is acquired, possessed, or transferred in the ordinary course of business.

(19) Used automotive parts recycler--A person licensed under this title to operate a used automotive parts recycling business.

(20) Used automotive parts recycling--The dismantling and reuse or resale of used automotive parts and the safe disposal of salvage motor vehicles or nonrepairable motor vehicles, including the resale of those vehicles.

§87.15. Approval, Issuance or Denial of License.

(a) The department will issue a license under this chapter to an applicant who meets all of the requirements of this chapter. The department may deny an application if the applicant has had a license revoked under this chapter or for any reason permissible by law.

(b) The department will issue a license containing a single unique license number for each used automotive parts recycling business license or used automotive parts employee license issued under this chapter.

(c) If an applicant is determined to be not qualified under this chapter, the department will advise the applicant in writing of the reasons the applicant is not qualified or the deficiencies in the application.

§87.20. Licensing Requirements--Used Automotive Parts Recycling Business License Required.

(a) A person may not own or operate a used automotive parts recycling business or sell used automotive parts without first obtaining a license under this chapter.

(b) A used automotive parts recycler license is:

(1) valid for one year from the date of issuance;

(2) valid only for the facility listed on the license; and

(3) is not transferable.

§87.21. Licensing Requirements--Used Automotive Parts Recycling Business License Eligibility.

An applicant, a partner, principal, officer, or general manager of the applicant, or another license or permit holder with a connection to the applicant is ineligible for a used automotive parts recycling business license, if the applicant, a partner, principal, officer, or general manager of the applicant, or another license or permit holder with a connection to the applicant has:

(1) before the application date, been convicted of, pleaded guilty or nolo contendere to, or been placed on deferred adjudication for:

(A) a felony; or

(B) a misdemeanor punishable by confinement in jail or by a fine exceeding $500;

(2) violated an order of the commission or executive director, including an order for sanctions or administrative penalties; or

(3) knowingly submitted false information on the application.

§87.22. Licensing Requirements--Used Automotive Parts Recycling Business License Application Requirements.

An applicant for a used automotive parts recycling business license must:

(1) submit a completed application on a department-approved form;

(2) provide a valid federal tax identification number;

(3) file proof of insurance in accordance with §87.40;

(4) provide proof of a storm water permit, if required by the Texas Commission on Environmental Quality;

(5) successfully pass a criminal background check; and

(6) pay the fee required under §87.85.

§87.23. Licensing Requirements--Used Automotive Parts Recycling Business License Renewal.

(a) To renew a used automotive parts recycling business license, an applicant must:

(1) submit a completed application on a department-approved form;

(2) provide a valid federal tax identification number;

(3) file proof of insurance in accordance with §87.40;

(4) provide proof of a storm water permit, if required by the Texas Commission on Environmental Quality;

(5) successfully pass a criminal background check; and

(6) pay the applicable fee required under §87.85.

(b) To renew and maintain continuous licensure, the renewal requirements under this section must be completed prior to the expiration of the license. A late renewal means the licensee will have an unlicensed period from the expiration date of the expired license to the issuance date of the renewed license. During the unlicensed period, a person may not perform any functions of an automotive parts recycling business that requires a license under this chapter.

(c) Non-receipt of a license renewal notice from the department does not exempt a person from any requirements of this chapter.

§87.24. Used Automotive Parts Recycling Employee License--Required.

(a) Unless the person holds a used automotive parts employee license issued under this chapter, a person employed by a used automotive parts recycler may not in the scope of the person's employment:

(1) acquire a vehicle or used automotive parts; and

(2) may not sell used automotive parts.

(b) For purposes of this chapter, persons operating or managing a used automotive parts business unincorporated entity, including a sole proprietor, are employees of the used automotive parts business and subject to the employee license requirement.

(c) Used automotive parts recyclers may not employ a person required to hold a license under this chapter unless the person presents and the employer maintains a copy of a valid employee license issued under this chapter to the employee.

§87.25. Used Automotive Parts Recycling Employee License--Requirements.

(a) To be eligible for a used automotive parts recycling employee license, an applicant must:

(1) submit a completed application on a department-approved form;

(2) pay the fee required under §87.85; and

(3) successfully pass a criminal background check.

(b) A person performing the work identified in §87.21 may not work at a used automotive recycling business unless the individual holds a license issued under this chapter. A used automotive recycling business may not employ a person to perform the work identified in §87.21 unless the person holds a license issued by the department.

§87.26. Used Automotive Parts Recycling Employee License Renewal.

(a) To renew a used automotive parts recycling license, an applicant must:

(1) submit a completed application on a department-approved form;

(2) pay the applicable fee required under §87.85; and

(3) successfully pass a criminal background check.

(b) The department shall notify the license holder at least 30 days before the date a license expires.

(c) To renew and maintain continuous licensure, the renewal requirements under this section must be completed prior to the expiration of the license. A late renewal means the licensee will have an unlicensed period from the expiration date of the expired license to the issuance date of the renewed license. During the unlicensed period, a

person may not perform any function of a used automotive parts recycler employee that requires a license under this chapter.

(d) Non-receipt of a license renewal notice from the department does not exempt a person from any requirement of this chapter.

§87.30. Exemptions.

The provisions of this chapter do not apply to:

(1) a person who purchases not more than five nonrepairable or salvage motor vehicles at casual sale in a calendar year from:

(A) a salvage vehicle dealer;

(B) a salvage pool operator at auction; or

(C) an insurance company at auction;

(2) a metal recycler, unless a motor vehicle is sold, transferred, released, or delivered to the metal recycler for the purpose of reuse or resale as a motor vehicle or as a source of used parts, and is used for that purpose;

(3) a person who casually repairs, rebuilds, or reconstructs fewer than three salvage motor vehicles in the same calendar year;

(4) a person who is a non-United States resident who purchases nonrepairable or salvage motor vehicles for export only;

(5) an agency of the United States, an agency of this state, or a local government;

(6) a financial institution or other secured party that holds a security interest in a motor vehicle and is selling that motor vehicle in the manner provided by law for the forced sale of a motor vehicle;

(7) a receiver, trustee, administrator, executor, guardian, or other person appointed by or acting pursuant to the order of a court;

(8) a person selling an antique passenger car or truck that is at least 25 years old or a collector selling a special interest motor vehicle as defined in Transportation Code, §683.077, if the special interest vehicle is at least 12 years old; and

(9) a licensed auctioneer who, as a bid caller, sells or offers to sell property to the highest bidder at a bona fide auction under the following conditions:

(A) neither legal nor equitable title passes to the auctioneer;

(B) the auction is not held for the purpose of avoiding a provision of Texas Occupations Code, Chapter 2302, or this chapter; and

(C) an auction is conducted of motor vehicles owned, legally or equitably, by a person who holds a salvage vehicle dealer's license and the auction is conducted at a location for which a salvage vehicle dealer's license has been issued to that person or at a location approved by the department under this chapter.

§87.40. Insurance Requirements.

A used automotive parts recycling business may not conduct business or other automotive parts recycling operations in this state unless the licensee maintains a valid general liability insurance policy in an amount not less than $250,000.

§87.44. Inspections--General.

(a) All used automotive parts recycling businesses shall be inspected periodically, according to a risk-based schedule, or as a result of a complaint. These inspections will be performed to determine compliance with the requirements of the Act and this chapter. In addition, the department may make information available to used automotive parts recycling business owners and managers on best practices for risk-reduction techniques.

(b) Inspections shall be performed during the normal operating hours of the used automotive parts recycling business. The department may conduct inspections under the Act and this chapter with or without advance notice.

(c) The department inspector will contact the licensee, manager, or representative upon arrival at the facility location, and before proceeding with the inspection.

(d) The licensee, manager, or representative shall cooperate with the inspector in the performance of the inspection.

(e) Periodic and risk-based inspections under this section are in addition to any complaint based inspections and those inspections do not restrict the department's right to enter the licensed facility for purposes of enforcement and compliance.

§87.45. Inspections--Periodic.

(a) Each used automotive parts recycling business shall be inspected at least once every two years.

(b) The used automotive parts recycling business owner, manager, or their representative must, immediately upon request, make available to the inspector all records, notices and other documents required by this chapter.

(c) Upon completion of the inspection, the owner manager, or representative shall be advised in writing of the results of the inspection. The inspection report will indicate whether the inspection was approved or not approved, and will describe any violations identified during the inspection.

(d) For inspections that are not approved, the inspection report will identify violations that must be corrected by the licensee. The report will also indicate the corrective actions required to address the violations. Additionally, the department may assess administrative penalties and/or administrative sanctions for violations.

(e) Based on the results of the periodic inspection, a used automotive parts recycling business may be moved to a risk-based schedule of inspections. The department will notify the licensee, in writing, if the licensee becomes subject to the risk-based inspection schedule and the scheduled frequency of inspection.

§87.46. Inspections--Risk-based.

(a) Risk-based inspections are those required in addition to periodic inspections required under §87.45, for any used automotive parts recycling business determined by the department to be a greater risk to the public.

(b) To determine which used automotive parts recycling business will be subject to risk-based inspections, the department shall established criteria and frequencies for inspections.

(c) The licensee shall pay the fee required under §87.85 for each risk-based inspection, in a manner established by the department.

(d) Each used automotive parts recycling business subject to risk-based inspections will be scheduled for inspection based on the following risk criteria and inspection frequency:

Figure: 16 TAC §87.46(d)

(e) At the time of inspection of a used automotive parts recycling business, the owner, manager, or their representative must, upon request, make available to the inspector, records, notices and other documents required by this chapter.

(f) Upon completion of the inspection, the licensee shall be advised in writing of the results of the inspection.

(g) The inspection report will identify violations that must be corrected by the licensee. The report will also indicate the corrective actions required to address the violations. Additionally, the department may assess administrative penalties and/or administrative sanctions for violations.

(h) A licensee on a risk-based inspection schedule that has no significant violations in four consecutive inspections may be moved to a less frequent risk-based inspection schedule or returned to a periodic schedule of inspections. The department will notify the licensee if there is a change in the licensee's risk-based schedule or if the licensee is returned to a periodic inspection schedule.

§87.47. Corrective Actions Following Inspection.

(a) When corrective actions to achieve compliance are required:

(1) the department shall provide the towing company a list of required corrective modification(s);

(2) within 10 days after receiving the list of required corrective actions, the owner shall complete all corrective actions and provide written verification of the corrective actions to the department; and

(3) the department may grant an extension, consistent with established procedures, if satisfactory evidence is presented showing that the time period specified is inadequate to perform the necessary corrections.

(b) The department may assess administrative penalties and/or administrative sanctions for violations or for failure to complete corrective actions timely or provide written verification to the department timely, in accordance with §87.90.

§87.50. Reporting Requirements--Filing of Vehicle Ownership Documents.

(a) Used automotive parts recyclers who acquire ownership of a motor vehicle, nonrepairable motor vehicle, or salvage motor vehicle for the purpose of dismantling, scrapping, or destroying the motor vehicle, shall, before the 31st day after the date of acquiring the motor vehicle, submit to the Texas Department of Motor Vehicles a properly assigned manufacturer's certificate of origin, regular certificate of title, nonrepairable vehicle title, salvage vehicle title, other ownership document, or comparable out-of-state ownership document for the motor vehicle.

(b) Used automotive parts recyclers shall keep and maintain evidence of compliance with subsection (a).

§87.65. Advisory Board.

(a) The advisory board consists of the five members representing the used automotive parts industry in this state appointed by the presiding officer of the commission with the approval of the commission. The five members include:

(1) members who represent used automotive parts businesses owned by domestic entities, as defined by Business Organizations Code, §1.002; and

(2) one member who represents a used automotive parts business owned by a foreign entity, as defined by Business Organizations Code, §1.002.

(b) The advisory board may not include more than one member from any one used automotive parts business entity.

(c) Advisory board members serve terms of six years, with the terms of one or two members expiring on February 1 of each odd-numbered year.

(1) A member may not serve more than two full consecutive terms.

(2) If a vacancy occurs during a term, the chairman of the commission will appoint a replacement who meets the qualifications of the open position to serve for the balance of the term.

(d) The presiding officer of the commission shall appoint one of the advisory board members to serve as the presiding officer of the advisory board for one year. The presiding officer of the advisory board may vote on any matter before the advisory board.

(e) Advisory board members do not receive compensation. They are, subject to the General Appropriations Act, may be reimbursed for actual and necessary expenses incurred in performing the duties of the advisory board.

(f) The advisory board meets twice yearly and may meet at other times at the call of the presiding officer of the commission or the executive director.

(g) The advisory board provides advice and recommendations to the department on technical matters relevant to the administration and enforcement of this chapter, including licensing standards.

§87.70. Responsibilities of the Licensee--Acquiring Vehicles.

Used automotive parts recyclers who acquire ownership of a salvage motor vehicle shall obtain a properly assigned title from the previous owner of the vehicle.

§87.71. Responsibilities of the Licensee--Record Retention.

(a) A used automotive parts recycler shall maintain a record of or sales receipt for each motor vehicle, salvage motor vehicle, nonrepairable motor vehicle, and used automotive part purchased.

(b) Unless required by another section of this chapter, a used automotive parts recycler shall maintain records required by this chapter for a pried of three years from the date of the event reflected in the record.

§87.72. Responsibilities of the Licensee--Registration of New Business Location.

(a) Before moving a place of business, a used automotive parts recycler must notify the department of the new location.

(b) The used automotive parts recycler shall provide a storm water permit for the location if a permit is required by the Texas Commission on Environmental Quality.

§87.73. Responsibilities of the Licensee--Removal of License Plates.

Immediately on receipt of a motor vehicle, a used automotive parts recycler shall:

(1) remove any unexpired license plates from the vehicle; and

(2) place the license plates in a secure place until destroyed by the used automotive parts recycler.

§87.74. Responsibilities of the Licensee--Dismantlement or Disposal of Motor Vehicle.

A used automotive parts recycler may not dismantle or dispose of a motor vehicle unless the recycler first obtains:

(1) a certificate of authority to dispose of the vehicle, a sales receipt, or a transfer document for the vehicle issued under Transportation Code, Chapter 683; or

(2) a certificate of title showing that there are no liens on the vehicle or that all recorded liens have been released.

§87.75. Responsibilities of the Licensee--Record of Purchase; Inventory of Parts.

(a) A used automotive parts recycler shall keep an accurate and legible record of each used component part purchased by or delivered to the recycler. The record must include:

(1) the date of purchase or delivery;

(2) the driver's license number of the seller and a legible photocopy of the seller's driver's license; and

(3) a description of the part and, if applicable, the make and model of the part.

(b) As an alternative to the information required by subsection (a), a used automotive parts recycler may record:

(1) the name of the person who sold the part or the motor vehicle from which the part was obtained; and

(2) the Texas certificate of inventory number or the federal taxpayer identification number of the person.

(c) The department shall prescribe the form of the record required by subsection (a) and shall make the form available to used automotive parts recyclers.

(d) This section does not apply to:

(1) an interior component part or special accessory part from a motor vehicle more than 10 years old; or

(2) a part delivered to a used automotive parts recycler by a commercial freight line, commercial carrier, or licensed used automotive parts recycler.

§87.76. Responsibilities of the Licensee--Retention of Component Parts.

(a) A used automotive parts recycler shall retain each component part in its original condition on the business premises of the recycler for at least three calendar days, excluding Sundays, after the date the recycler obtains the part.

(b) This section does not apply to the purchase by a used automotive parts recycler of a nonoperational engine, transmission, or rear axle assembly from another used automotive parts recycler or an automotive-related business.

§87.77. Responsibilities of the Licensee--Maintenance of Records.

A used automotive parts recycler shall maintain copies of each record required under this chapter until the first anniversary of the purchase date of the item for which the record is maintained.

§87.78. Responsibilities of the Licensee--Surrender of Certain Documents or License Plates.

(a) A used automotive parts recycler shall surrender to the Texas Department of Motor Vehicles (DMV) for cancellation a certificate of title or authority, sales receipt, or transfer document, as required by the DMV.

(b) For each vehicle for which a document is surrendered in compliance with subsection (a), the licensee shall obtain a signed receipt for a surrendered certificate of title.

§87.79. Responsibilities of the Licensee--Inspection of Records by Peace Officers.

(a) A peace officer at any reasonable time may inspect a record required to be maintained under this chapter, including an inventory record.

(b) On demand by a peace officer, a used automotive parts recycler shall provide to the officer a copy of a record required to be maintained under this chapter.

(c) A peace officer may inspect the inventory on the premises of a used automotive parts recycler at any reasonable time to verify, check, or audit the records required to be maintained under this chapter.

(d) A used automotive parts recycler or an employee of the recycler shall allow and may not interfere with a peace officer's inspection of the recycler's inventory, premises, or required inventory records.

§87.80. Responsibilities of the Licensee--Records of Casual Sales.

Each licensed used automotive parts recycler or insurance company that sells a nonrepairable motor vehicle or a salvage motor vehicle at a casual sale shall keep on the business premises a list of all casual sales made during the preceding 36-month period that contains:

(1) the date of the sale;

(2) the name of the purchaser;

(3) the name of the jurisdiction that issued the identification document provided by the purchaser, as shown on the document; and

(4) the vehicle identification number.

§87.81. Responsibilities of the Licensee--Hours of Operation Using Heavy Machinery.

(a) This section applies only to a used automotive parts facility business located in a county with a population of 2.8 million or more.

(b) A used automotive parts recycler may not operate heavy machinery in a used automotive parts recycling facility between the hours of 7 p.m. of one day and 7 a.m. of the following day.

(c) This section does not apply to conduct necessary to a sale or purchase by the recycler.

§87.85. Fees.

(a) Application Fees.

(1) Permit Used Automotive Parts Facility Business.

(A) Original Application--$120

(B) Renewal--$120

(C) Duplicate Permit--$25

(D) Permit Amendment--$25

(2) Used Automotive Parts Recycling Employee License.

(A) Original Application--$30

(B) Renewal--$30

(C) Duplicate License--$25

(D) Permit Amendment--$25

(b) Risk-based inspections--$150

(c) Late renewal fees for licenses issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(d) All fees are nonrefundable except as provided for by commission rules or statute.

§87.90. Administrative Sanctions.

A person that violates Texas Occupations Code, Chapter 2309, a rule, or an order of the executive director or commission relating to Texas Occupations Code, Chapter 2309, will be subject to administrative sanctions and/or administrative penalties under Texas Occupations Code, Chapters 51 and 2309 and applicable agency rules.

§87.91. Enforcement Authority.

The enforcement authority granted under Texas Occupations Code, Chapters 51 and Chapter 2309 and any associated rules may be used to enforce Texas Occupations Code, Chapter 2309 and this chapter.

§87.92. Cease and Desist Order.

The executive director may issue a cease and desist order as necessary to enforce this chapter if the executive director determines the action is necessary to prevent a violation of this chapter and to protect public health and safety.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 26, 2009.

TRD-200904851
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: December 6, 2009
For further information, please call: (512) 463-7348

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CHAPTER 94. PROPERTY TAX PROFESSIONALS

16 TAC §§94.1, 94.10, 94.20, 94.22, 94.25, 94.26, 94.70 - 94.73, 94.80, 94.90, 94.91, 94.100

The Texas Department of Licensing and Regulation ("Department") proposes new rules at 16 Texas Administrative Code, Chapter 94, §§94.1, 94.10, 94.20, 94.22, 94.25, 94.26, 94.70 - 94.73, 94.80, 94.90, 94.91, and 94.100 regarding the property tax professionals program. The proposed rules implement changes delineated in House Bill 2447 ("HB 2447"), 81st Legislature, Regular Session, 2009, which transferred the regulation of property tax professionals from the Board of Tax Professional Examiners to the Texas Department of Licensing and Regulation effective June 19, 2009, and which amended Texas Occupations Code, Chapter 1151 relating to the regulation of property tax professionals.

These proposed rules are filed simultaneously with the proposed repeal of the rules of the Board of Tax Professional Examiners in order to reorganize and clarify the rules regulating property tax professionals under Title 16, Texas Administrative Code, relating to the rules of the Texas Department of Licensing and Regulation.

Section 94.10 establishes definitions, in addition to those found in Chapter 1151, for terms that are used in the administrative rules.

Section 94.20 incorporates verbatim the requirements in the statute for defining who must register.

Section 94.21 delineates the requirements for registration and fulfils the statutory obligation in Texas Occupations Code, §1151.103 to create a classification system for registrants. Under this system, a registrant may register as either an appraiser, assessor/collector, or collector. These classifications were used by the previous regulatory board and have been preserved to eliminate confusion on the part of registrants currently working in the industry. This section further requires under §94.21(8)(A)(iv) and (8)(B)(iv) that an appraiser and assessor/collectors become certified in the highest registration class of their field within five years of registration. Collectors are required under §94.21(C)(iii) to be fully certified in their highest class within three years of Texas Occupations Code, §1151.160(c)(1),(2), and (3).

Section 94.22 deals with the renewal of registration. The rule sets out that the registration will expire on December 31st of each year. The statutory requirement under Texas Occupations Code, §1151.158(a) calls for the Department to implement an expiration date for the registration. This is in keeping with the industry standard implemented by taxing authorities and appraisal districts. The further provisions under §94.22 mirror Chapter 60 of the Occupations Code, which contains procedural requirements that apply to all the Department's regulated industries.

Section 94.25 defines the processes and required hours for continuing education for each registration group. Additionally, it limits the subject matter of continuing education courses that the Comptroller of Public Accounts (Comptroller) will approve for proposed courses.

Section 94.26 lists the recognized core courses, and their subject matter, necessary for certification and additionally used as continuing education material. These courses were previously used by the Board of Tax Professional Examiners. The same titles and course numbers are used to ensure that no registrant is confused as to the courses they have completed or still require as is appropriate for their certification path. Lastly, core courses shall be taught by instructors approved by the Comptroller.

Section 94.70 describes the general responsibilities of a registration. These provisions include the requisite under Texas Occupations Code, §1151.202(a) that a registrant not be in violation of any provision of the act or rules of the Department. This also mirrors the requirement under Board of Tax Professional Examiners, under old rule §625.1.

Section 94.70(b) requires that a respondent timely respond to an investigative request. This rule is written to facilitate the requirements upon the Department under Texas Occupations Code, §1151.202(c) of the statute. Under this section, the Department must consider evidence of: (1) a good faith effort on the part of a registrant to comply with a law or guiding principal; (2) the reliance of registrants to follow the advice of their attorney; or (3) the discretion registrants had over their action which is subject of the complaint. In order to consider these levels of evidence, the Department must have a complete and timely written response to investigation inquiries to comply with this statutory charge.

Section 94.70(c) requires that they must inform the Department of any change to their employment and change their registration as is appropriate. As defined under Texas Occupations Code, §1151.151, it is clear that for registrants to be actively engaged in the industry, they must be employed. To meet this requirement it is imperative that the Department, and in turn the public, have accurate information as to the current employment activity of any registrant. This rule also reflects the same concept as reflected in Board of Tax Professional Examiners rule §623.16.

Section 94.70(d) mirrors Board of Tax Professional Examiners rule §625.1(2) to not violate the Code of Ethics.

Section 94.70(e) follows the Board of Tax Professional Examiners rule §628.1(b) requiring that a registrant must not engage in acts of improper influence, conflict of interest, unfair treatment, abuse of powers, or misuse of titles.

Section 94.70(f) requires that a registrant be in compliance with any report issued under §5.102 of the Tax Code. Under

Texas Occupations Code, §1151.1015, the Comptroller's office will refer reports under Tax Code, §5.102 to the Department. The Texas property tax code was amended under House Bill 8 passed by the 81st Legislature, Regular Session, 2009. It requires that the Board of Tax Professional Examiners or its successor, take action necessary to ensure that the recommendations in the report are implemented as soon as practicable. The jurisdiction over which the Department has authority to enforce any matter of law is on its registrants. Although the report issued under §5.102 will grade the performance measure of an appraisal district, the only party contributing to the district's audited performance over which the Department has jurisdiction is the appraisal district's chief appraiser. Given the limited jurisdiction of the Department to ensure that the report recommendations to an appraisal district are implemented as required by statute, this rule creates a basis of disciplinary action against a registrant that the Department may rely on to satisfy the statutory burden placed on it by House Bill 8.

Section 94.70(g) and (h) ensures that registrants fulfill the statutory obligations under Texas Occupations Code, §1151.160(c)(1) - (3) to pass their respective exams timely. Furthermore, registered Texas assessor/collector and registered professional appraiser must pass their level three exams no later than year three of their participation in the registered industry.

Section 94.70(i) allows that a registrant may participate in a purely private capacity in a personal tax matter. This largely follows the previous standards set by the previous board.

Sections 94.71, 94.72, 94.73 are further provisions detailing the responsibilities of the registrant and in large part are taken from the rules of the previous board specifically noting §§628.5, 628.3(2), 628.6(8), 627.1(4), 628.5(9), 628.6(12), 628.5(11), 628.5(1), 628.4, 628.6(4), and 628.7(1).

Section 94.80 describes the fees applicable to the Department and are dictated by the cost of implementation and facilitation of this program.

Section 94.90 prescribes under what criteria the Department has authority to impose sanction and penalties under Texas Occupations Code Chapters 51 and 1151.

Section 94.91 describes the Department's authority to enforce rules pursuant to Texas Occupation Code, Chapters 51 and 1151.

Section 94.100 lists the code of ethics referred to in Texas Occupations Code, §1151.153(b) and required with each application. The current code of ethics is largely dictated by the code of ethics used by the previous board.

The substance of these rule changes was recommended by the Tax Professional Advisory Committee ("Committee") at its meeting on October 14, 2009.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed new rules are in effect there will be no direct cost to state or local government as a result of enforcing or administering the proposed rules.

Mr. Kuntz also has determined that for each year of the first five-year period the new rules are in effect, the public benefit will be added protection for the public health and safety. The result will be realized efficiency for the program and the industry at large.

There is no anticipated adverse economic effect on small or micro-business or to persons who are required to comply with the rules as proposed.

There is no anticipated potential economic impact of the proposed new rules on small or micro businesses. Since the agency has determined that the rule will have no adverse economic effect on small or micro businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Caroline Jackson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register.*

The new rules are proposed under Texas Occupations Code, Chapter 51 and Chapter 1151, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 1151. No other statutes, articles, or codes are affected by the proposal.

§94.1. Authority.

This chapter is promulgated under the authority of Texas Occupations Code, Chapters 51 and 1151.

§94.10. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Act--Texas Occupations Code, Chapter 1151.

(2) Core Course--Education required for classification.

(3) Registered Texas Collector ("RTC")--Class III Collector.

(4) Registered Professional Appraiser ("RPA")--Class IV Appraiser.

(5) Registered Texas Assessor/Collector ("RTA")--Class IV Assessor/Collector.

(6) USPAP--Uniform Standards of Professional Appraisal Practice.

§94.20. Persons Required to Register.

(a) Those required to register are:

(1) the chief appraiser of an appraisal district, an appraisal supervisor or assistant, a property tax appraiser, an appraisal engineer, and any other person authorized to render judgment on, recommend, or certify an appraised value to the appraisal review board of an appraisal district;

(2) a person who engages in appraisal of property for ad valorem tax purposes for an appraisal district or a taxing unit;

(3) an assessor-collector, a collector, or another person designated by a governing body as the chief administrator of the taxing unit's assessment functions, collection functions, or both; and

(4) a person who performs assessment or collection functions for a taxing unit and is required to register by the chief administrator of the unit's tax office.

(b) A county assessor-collector is not required to register with the Department if the county, by contract entered into under §6.24(b) Tax Code, has its taxes assessed and collected by another taxing unit or an appraisal district.

§94.21. Registration.

(a) To be registered an applicant must:

(1) be at least 18 years of age;

(2) be a resident of the State of Texas;

(3) be a person of good moral character;

(4) be a graduate of an accredited high school or holder of high school graduation equivalency;

(5) be actively engaged in appraisal, assessing/collecting, or collecting for an appraisal district; tax office, or private firm working for an appraisal district or tax office;

(6) submit a completed application on a form approved by the department;

(7) pay the applicable fees under §94.80;

(8) successfully complete all requisites appropriate for the applicant's classification level.

(A) Appraisers:

(i) a Class I appraiser must be registered.

(ii) a Class II appraiser must:

(I) be registered as a Class I appraiser registrant, and

(II) successfully complete core courses 1 and 30, referenced in §94.26.

(iii) a Class III appraiser must:

(I) be registered as a Class II appraiser registrant,

(II) successfully complete courses 2, 3, and 4, referenced in §94.26, and

(III) pass the appraiser Class III examination.

(iv) a Class IV appraiser must:

(I) be registered as a Class III appraiser registrant,

(II) successfully complete courses 5, 7, 10, and 32, referenced in §94.26, and

(III) pass the appraiser Class IV examination not later than five years after initial registration date.

(B) Assessor/Collectors:

(i) a Class I assessor/collector must be registered.

(ii) a Class II assessor/collector must:

(I) be registered as a Class I assessor/collector registrant, and

(II) successfully complete courses 1 and 30, referenced in §94.26.

(iii) a Class III assessor/collector must:

(I) be registered as a Class II assessor/collector registrant, and

(II) successfully complete courses 7, 8, 9, and 28, referenced in §94.26, and

(III) pass the assessor/collector Class III examination.

(iv) a Class IV assessor/collector must:

(I) be registered as a Class III assessor/collector registrant, and

(II) successfully complete course 6, referenced in §94.26, two elective courses, and

(III) pass the assessor/collector Class IV examination not later than five years after initial registration date.

(C) Collectors:

(i) a Class I collector must be registered.

(ii) a Class II collector must:

(I) be registered as a Class I collector registrant, and

(II) successfully complete courses 1 and 30, referenced in §94.26.

(iii) a Class III collector must:

(I) be registered as a Class 2 collector registrant, and

(II) successfully complete courses 6, 7, 8, and 9, referenced in §94.26, and

(III) pass the collector Class III examination not later than three years after initial registration date.

§94.22. Renewal of Registration.

(a) All registrations expire on December 31st of each year.

(b) To renew an applicant must:

(1) comply with all provisions of the Act and this chapter;

(2) submit a completed application on a department-approved form;

(3) pay the applicable fees; and

(4) successfully complete all requisites appropriate for the renewal applicant's classification level.

(c) To renew and maintain continuous registration, the renewal requirements must be completed prior to the expiration of the registration.

(d) Applications not filed by the expiration date are considered applications for late renewal and are subject to late renewal fees under §60.83 of this title (relating to Late Renewal Fees).

(e) Registrations issued from a late renewal application will have an unregistered period from the expiration date of the previous registration to the issuance date of the renewed registration. Work that requires a registration issued under this chapter must not be performed during the unregistered period.

(f) A registrant must complete all registration renewal requirements within one year of the date the registration expires, or the renewal application shall be deemed void.

(g) If the registrant does not meet the deadline established in subsection (f), the person must reapply for a new registration by complying with the requirements and procedures, including any examination requirements and payment of fees.

(h) Non-receipt of a renewal notice from the department does not exempt a person from any requirement of this chapter.

§94.25. Continuing Education.

(a) Terms used in this section have the meanings assigned by Chapter 59 of this title, unless the context indicates otherwise.

(b) For each fifth renewal of the following registration types: Registered Texas Assessor or Registered Professional Appraiser, a registrant must complete 75 hours of continuing education in courses approved by the Comptroller of Public Accounts.

(c) For each fifth renewal of a Registered Texas Collector, a registrant must complete 25 hours of continuing education in courses approved by the Comptroller of Public Accounts.

(d) The continuing education hours must have been completed within the five-year period ending with the current expiration date of the registration, in the case of a timely renewal. For a late renewal, the continuing education hours must have been completed within the five-year period prior to the date of renewal.

(e) A core course listed under §94.26 may be taken for continuing education credit.

(f) A registrant may not receive continuing education credit for attending the same course more than once.

(g) For each fifth renewal, a Registered Texas Collector, Registered Professional Appraiser, or Registered Texas Assessor/Collector must complete a course, or combination of courses, dedicated to instruction in:

(1) appraisal procedures and methods;

(2) tax assessment and collection;

(3) ethics; or

(4) laws and rules.

(h) A Registered Texas Collector, Registered Professional Appraiser, or Registered Texas Assessor/Collector must retain a copy of the certificate of completion for a course for five years after the date of completion. In conducting any inspection or investigation of the registrant, the department may examine the registrant's records to determine compliance with this subsection.

(i) To be approved by the Comptroller, a provider's course must be dedicated to instruction in:

(1) appraisal procedures and methods;

(2) tax assessment and collection;

(3) ethics; or

(4) laws and rules.

§94.26. Core Curriculum.

(a) Courses:

(1) Course 1: Introduction to the Texas Property Tax System--overview of property tax appraisal and assessment.

(2) Course 2: Appraisal of Real Property--theory and practice of property appraisal using cost and market approaches.

(3) Course 3: Income Approach to Value--overview of direct capitalization formulas, residual techniques, and income and expense analysis.

(4) Course 4: Personal Property Appraisal--theory and practice of identifying personal property and valuing it for property taxation.

(5) Course 5: Mass Appraisal Concepts--basic concepts of Mass Appraisal.

(6) Course 6: Ad Valorem Office Administration--study of tax office administration.

(7) Course 7: Texas Property Tax Law--overview of Texas Property Tax Law.

(8) Course 8: Assessment and Collection--overview of property tax calendar and property tax assessment and collections procedures and administration.

(9) Course 9: Advanced Assessment and Collections--study of current and delinquent collections practices and procedures.

(10) Course 10: Analyzing a Real Property Appraisal--study of analyzing appraisals and identifying strength and weaknesses.

(11) Course 28: Truth in Taxation--study of effective tax rate and rollback rate calculations.

(12) Course 30: Ethics for Tax Professionals--overview of ethics for property tax professionals.

(13) Course 31: USPAP--USPAP update without examination.

(14) Course 32: USPAP--USPAP update for new registrants with examination.

(b) Core courses shall be taught by instructors approved by the Comptroller of Public Accounts.

§94.70. Responsibilities of a Registrant: General.

(a) A registrant must not violate any provision of the Act or this chapter.

(b) A registrant must timely respond to the department's investigative requests including making a complete written answer to any complaint.

(c) Registrants must inform the department within 30 days of any changes to their employment and change their registration as appropriate.

(d) A registrant must not violate the property tax professional's Code of Ethics, referenced in §94.100, or aid or encourage another to violate the Code of Ethics.

(e) A registrant must not engage in any practices that constitute acts of improper influence, conflict of interest, unfair treatment, discrimination, abuse of powers, or misuse of titles.

(f) A registrant must be in compliance with any report issued by the Comptroller of Public Accounts under §5.102 of the Tax Code.

(g) An appraisal registrant or assessor/collector registrant must pass the Class IV examination not later than five years after initial registration date.

(h) A registrant must pass the Class III examination not later than three years after initial registration date.

(i) A registrant may act in a purely private capacity regarding a personal tax matter so long as he does not use his official position to influence the outcome of such a dispute.

§94.71. Responsibilities of a Registrant: Equal and Fair Treatment.

(a) A registrant must apply equally and fairly any appraisal, assessment, or consulting service according to the Uniform Standards of Professional Appraisal Practice and generally accepted appraisal, assessment, or collection practices applicable to an assignment.

(b) A registrant may not accept or solicit any benefit in return for favorable treatment.

(c) A registrant must not knowingly testify falsely or withhold any information, or influence anyone into testifying falsely or withholding any information in any investigation or proceeding.

(d) A registrant must not knowingly mislead any member of the public who makes a reasonable inquiry or request on tax matters.

(e) A registrant must not predetermine the value or value range of a property or properties and then manipulate data to arrive at a predetermined conclusion.

(f) A registrant must not perform calculations:

(1) by methods other than those directed by law, rule, or written guidance of the Comptroller of Public Accounts, or

(2) that are designed to result in a predetermined effective tax rate, or rollback tax rate, current or delinquent collection rate, or other value, rate, or ratio used for official purposes.

(g) A registrant must not provide, to any private party, information that is not provided to, or reasonably available to all persons.

§94.72. Responsibilities of a Registrant: Conflicts of Interest.

(a) A registrant must disclose in writing to the appraisal district or taxing entity any relationship of consanguinity within the third degree that may relate to an assignment so long as he holds a registration position.

(b) A registrant must disclose in writing to the appraisal district or taxing entity any outside employment.

(c) A registrant must disclose in writing to the appraisal district or taxing entity any financial interest in any private business or real property subject to the appraisal district or taxing entity where she is employed.

(d) A registrant must not invest in property, interests, or transactions which create a conflict of interest or which affects independent judgment or performance in the official position.

(e) A registrant must not engage in any activity or employment outside of the appraisal office or tax office if such engagement adversely affects his impartiality in the execution of his official duties or adversely affects the performance of his official duties.

(f) A registrant must not use agency resources for the personal benefit of himself, any party in whom he has an interest, or any public servant; or for the benefit of any social or political organization unless any member of the general public could make similar use of the agency resources.

(g) A registrant in their official capacity must not endorse the services or products of any person or firm.

§94.73. Responsibility of Registrant: Use of Titles.

A person may not use the titles Registered Professional Appraiser, Registered Texas Assessor/Collector, or Registered Texas Collector unless he is an active and certified registrant with the department and performing official duties as a property tax appraiser, assessor/collector, or collector.

§94.80. Fees.

(a) Application fees.

(1) Appraiser--$105

(2) Collector--$105

(3) Assessor/Collector--$105

(b) Renewal fees.

(1) Appraiser--$55

(2) Collector--$55

(3) Assessor/Collector--$55

(c) Examination fees.

(1) Class III Appraiser--$55

(2) Class III Assessor/Collector--$55

(3) Class III Collector--$80

(4) Class IV Appraiser--$80

(5) Class IV Assessor/Collector--$80

(d) Late Renewal Fees. Late renewal fees for licenses issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(e) Revised or duplicate license fees--$25.

(f) All fees are non-refundable, except as otherwise provided by law.

§94.90. Sanctions and Administrative Penalties.

A person who violates the Texas Occupations Code, Chapter 1151, a rule, or an order of the executive director or commission relating to Texas Occupations Code, Chapter 1151, will be subject to administrative sanctions and/or administrative penalties under Texas Occupations Code, Chapters 51 and 1151 and applicable agency rules.

§94.91. Enforcement Authority.

The enforcement authority granted under Texas Occupations Code, Chapters 51 and 1151 and any associated rules may be used to enforce Texas Occupations Code, Chapter 1151 and this chapter.

§94.100. Code of Ethics.

Registrants must:

(1) be guided by the principle that property taxation should be fair and uniform, and apply all laws, rules, methods, and procedures, in a uniform manner, to all taxpayers;

(2) not accept anything of value from any party other than their employer as an appraiser, assessor, or collector;

(3) not use information received in connection with the duties of an appraiser, assessor, or collector for their own purposes, unless such information can be known by ordinary means to any ordinary citizen;

(4) not engage in an official act that is dishonest, misleading, fraudulent, deceptive, or in violation of law;

(5) not conduct their professional duties in a manner that could reasonably be expected to create the appearance of impropriety;

(6) not accept an appraisal, assessment, or collection related assignment that can reasonably be construed as being in conflict with the registrant's responsibility to their jurisdiction, employer, or client, or in which the registrant has an unrevealed personal interest or bias; and

(7) not accept an assignment or responsibility in which the registrant has a personal interest without full disclosure of that interest.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 19, 2009.

TRD-200904764
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: December 6, 2009
For further information, please call: (512) 463-7348

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TITLE 22. EXAMINING BOARDS

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.7

The Texas Funeral Service Commission (commission) proposes amendments to §203.7, concerning Price Disclosure.

The amendments to §203.7 are proposed in order to update the requirements for specific descriptions of merchandise listed on the retail price list and statement of goods and services and, with the increasing demand for cremation, to require a price list for urns.

O. C. "Chet" Robbins, Executive Director, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering the proposed amendments.

Mr. Robbins further has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be greater transparency for the funeral consumer who is making a decision with respect to the purchase of funeral-related items. Mr. Robbins also has determined that there will be no effect on large, small or micro-businesses; there is no anticipated economic costs to persons who are required to comply with the amendments as proposed; and there will be no impact on local employment or economies.

Comments on the proposal may be submitted to O. C. "Chet" Robbins at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax), or electronically to chet.robbins@tfsc.state.tx.us.

The amendments are proposed under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

No other statutes, articles, or codes are affected by the proposal.

§203.7. Price Disclosure.

(a) Unfair or deceptive acts or practices. In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider to fail to furnish accurate price information disclosing the cost to the purchaser for each of the specific funeral goods and funeral services used in connection with the disposition of deceased human bodies, including at least the price of embalming, transportation of remains, use of facilities, caskets, outer burial containers, urns, immediate burials, or direct cremations, to persons inquiring about the purchase of funerals. Any funeral provider who complies with the preventive requirements in subsection (b) of this section is not engaged in the unfair or deceptive acts or practices defined here.

(b) Preventive requirements. To prevent these unfair or deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in §203.9(b)(1) of this title (relating to Other required purchases of funeral goods or funeral services), funeral providers must:

(1) Telephone price disclosure. Tell persons who ask by telephone about the funeral provider's offerings or prices any accurate information from the price lists described in paragraphs (2) - (5) [~~(4)~~] of this subsection and any other readily available information that reasonably answers the question.

(2) Casket price list.

(A) Give a printed or typewritten price list to people who inquire in person about the offerings or prices of caskets or alternative containers. The funeral provider must offer the list upon beginning discussion of, but in any event before showing caskets. [~~The list must contain at least the retail prices of all caskets and alternative containers offered which do not require special ordering, enough information to identify each, and the effective date for the price list.~~] In lieu of a written list, other formats, such as notebooks, brochures, or charts may be used if they contain the same information as would the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make a casket price list available if the funeral providers place on the general price list, specified in paragraph (5) [~~(4)~~] of this subsection, the information required by this subsection.

(B) The list must contain the effective date and the retail prices of all caskets and alternative containers offered which do not require special ordering, and must include, at a minimum, the following specifications:

(i) The type of material that is predominately used in the construction of the merchandise, i.e.:

(I) steel, identified as stainless or by gauge, e.g., 18 gauge;

(II) wood, identified by type, e.g., pecan or cherry;

(III) bronze, described by weight, e.g., 32 oz.;

(IV) copper, described by weight, e.g., 32 oz.; or

(V) other specifically named material, e.g., such as cardboard or corrugated wood;

(ii) The type of sealing feature, e.g., sealer, non-sealer, gasketed, or non-gasketed, if specified on the funeral provider's general price list; and

(iii) The material lining the interior of the casket, e.g., crepe, velvet, satin, twill or silk.

(C) [~~(B)~~] Place on the list, however produced, the name of the funeral provider's place of business and a caption describing the list as a "casket price list."

(3) Outer burial container price list.

(A) Give a printed or typewritten price list to persons who inquire in person about outer burial container offerings or prices. The funeral provider must offer the list upon beginning discussion of, but in any event before showing the containers. The list must contain

at least the retail prices of all outer burial containers offered which do not require special ordering, enough information to identify each container, and the effective date for the prices listed. In lieu of a written list, the funeral provider may use other formats, such as notebooks, brochures, or charts, if they contain the same information as the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make an outer burial container price list available if the funeral providers place on the general price list, specified in paragraph (5) [~~(4)~~] of this subsection, the information required by this subsection. The description of an outer burial container under this section must, at a minimum, include the following specifications:

(i) The type of material that is predominantly used in the construction of the merchandise, i.e.:

(I) concrete, specifying type of construction, e.g., liner, box, or vault;

(II) steel, identified as stainless or by gauge, e.g., 12 gauge (or described as galvanized of a particular gauge);

(III) wood;

(IV) bronze or copper, described by weight or gauge, e.g., 32 oz. or 18 gauge; or

(V) other specifically named material; and

(ii) The type of sealing feature, e.g., sealer, non-sealer, gasketed, or non-gasketed, if specified on the funeral establishment price list.

(B) Place on the list, however produced, the name of the funeral provider's place of business, address, and telephone number, and a caption describing the list as an "outer burial container price list."

(4) Urn price list.

(A) Give a printed or typewritten price list to persons who inquire in person about urn offerings or prices. The funeral provider must offer the list upon beginning discussion of, but in any event, before showing the containers. The list must contain at least the retail prices of all urns offered which do not require special ordering, the description of an urn under this section must, at a minimum, include the type of material predominately used in its construction. Bronze urns must be described as sheet bronze or caste bronze, whichever is applicable. The price list must include the effective date for the prices listed. In lieu of a written list, the funeral provider may use other formats, such as notebooks, brochures, or charts, if they contain the same information as the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make an urn price list available if the funeral providers place on the general price list, specified in paragraph (5) of this subsection, the information required by this subsection.

(B) Place on the list, however produced, the name of the funeral provider's place of business, address and telephone number and a caption describing the list as an "urn price list."

(5) [~~(4)~~] General price list.

(A) Availability of general price list.

(i) Give a printed or typewritten price list for retention to persons who inquire in person about the funeral goods, funeral services or prices of funeral goods or services offered by the funeral provider. The funeral provider must give the list upon beginning discussion of any of the following:

(I) the prices of funeral goods or funeral services;

(II) the overall type of funeral service or disposition; or

(III) specific funeral goods or funeral services offered by the funeral provider.

(ii) The requirement in clause (i) of this subparagraph applies whether the discussion takes place in the funeral home or elsewhere. Provided, however, that when the deceased is removed for transportation to the funeral home, an in-person request at that time for authorization to embalm, required by §203.10(a)(2) of this title (relating to Prior approval for embalming), does not, by itself, trigger the requirement to offer the general price list if the provider in seeking prior embalming approval discloses that embalming is not required by law except in certain special cases, if any. Any other discussion during that time about prices or the selection of funeral goods or services triggers the requirement under clause (i) of this subparagraph to give consumers a general price list.

(iii) The list required in clause (i) of this subparagraph must contain at least the following information:

(I) the name, address, and telephone number of the funeral provider's place of business;

(II) a caption describing the list as a "general price list"; and

(III) the effective date for the price list.

(B) Include on the price list, in any order, the retail prices (expressed either as the flat fee, or as the price per hour, mile or other unit of computation) and the other information specified below for at least each of the following items, if offered for sale:

(i) forwarding of remains to another funeral home, together with a list of the services provided for any quoted price;

(ii) receiving remains from another funeral home, together with a list of the services provided for any quoted price;

(iii) the price range for the direct cremations offered by the funeral provider, together with:

(I) a separate price for a direct cremation where the purchaser provides the container;

(II) separate prices for each direct cremation offered including an alternative container; and

(III) a description of the services and container (where applicable), included in each price;

(iv) the price range for the immediate burials offered by the funeral provider, together with:

(I) a separate price for an immediate burial where the purchaser provides the casket;

(II) separate prices for each immediate burial offered including a casket or alternative container; and

(III) a description of the services and container (where applicable) included in that price;

(v) transfer of remains to funeral home;

(vi) embalming;

(vii) other preparation of the body;

(viii) use of facilities and staff for viewing;

(ix) use of facilities and staff for funeral ceremony;

(x) use of facilities and staff for memorial service;

(xi) use of equipment and staff for graveside service;

(xii) hearse; and

(xiii) limousine.

(C) Include on the general price list, in any order, the following information:

(i) Either of the following:

(I) The price range for the caskets offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or

(II) The prices of individual caskets, disclosed in the manner specified by paragraph (2)(A) of this subsection; and

(ii) Either of the following:

(I) The price range for the outer burial containers offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or

(II) The prices of individual outer burial containers, disclosed in the manner specified by paragraph (3)(A) of this subsection; and

(iii) Either of the following:

(I) The price for the basic services of funeral director and staff, together with a list of the principal basic services provided for any quoted price and, if the charge cannot be declined by the purchaser, the statement: "This fee for our basic services will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)". If the charge cannot be declined by the purchaser, the quoted price shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase "and overhead" after the word "services"; or

(II) The following statement: "Please note that a fee of (specify dollar amount) for the use of our basic services is included in the price of our caskets. This same fee shall be added to the total cost of your funeral arrangements if you provide the casket. Our services include (specify)." The fee shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase "and overhead" after the word "services." The statement must be placed on the general price list together with the casket price range, required by clause (i)(I) of this subparagraph, or together with the prices of individual caskets, required by clause (i)(II) of this subparagraph.

(D) The services fee permitted by subparagraph (C)(iii)(I) or (II) of this paragraph is the only funeral provider fee for services, facilities or unallocated overhead permitted by this part to be non-declinable, unless otherwise required by law.

(6) [~~(5)~~] Statement of funeral goods and services selected.

(A) Give an itemized written statement for retention to each person who arranges a funeral or other disposition of human remains, at the conclusion of the discussion of arrangements. The statement must list at least the following information:

(i) the funeral goods and funeral services selected by that person and the prices to be paid for each of them, unless there is a discounted package arrangement that itemizes the discount provided by the package arrangement;

(ii) specifically itemized cash advance items. (These prices must be given to the extent then known or reasonably ascertainable. If the prices are not known or reasonably ascertainable, a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid.); [~~and~~]

(iii) the total cost of the goods and services selected; and[~~.~~]

(iv) the complete description of all goods as described in paragraphs (2) - (5) of this subsection.

(B) The information required by this paragraph [~~(5) of this subsection~~] may be included on any contract, statement, or other document which the funeral provider would otherwise provide at the conclusion of discussion of arrangements.

(7) [~~(6)~~] Other pricing methods. Funeral providers may give persons any other price information, in any other format, in addition to that required by paragraphs (2) - (5)[~~, (3), and (4)~~] of this subsection so long as the statement required by paragraph (6) [~~(5)~~] of this subsection is given when required by the rule.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 20, 2009.

TRD-200904777
O. C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: December 6, 2009
For further information, please call: (512) 936-2466

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22 TAC §203.26

The Texas Funeral Service Commission (commission) proposes amendments to §203.26, concerning Funeral Directors and Embalmers License Requirements and Procedure, adding new subsection (d)(5).

The 81st Texas Legislature amended the Texas Occupations Code to clarify the manner in which a funeral director or embalmer whose license has expired both before and after September 1, 2009 may be renewed. The proposed amendments to §203.26 are designed to implement the legislative changes.

O. C. "Chet" Robbins, Executive Director, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering the proposed amendments.

Mr. Robbins has further determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be to ensure all licensees whose license expired more than one year prior to September 1, 2009, have met all applicable requirements. Mr. Robbins also has determined that there will be no effect on large, small or micro-businesses; there is no anticipated economic costs to persons who are required to comply with the amendments as proposed; and there will be no impact on local employment or economies.

Comments on the proposal may be submitted to O. C. "Chet" Robbins at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax), or electronically to chet.robbins@tfsc.state.tx.us.

The amendments are proposed under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

No other statutes, articles, or codes are affected by the proposal.

§203.26. Funeral Directors and Embalmers License Requirements and Procedure.

(a) - (c) (No change.)

(d) Renewal Procedures and Conditions

(1) - (3) (No change.)

(4) A person whose license has been expired for one (1) year or more prior to September 1, 2009, may not renew the license, but may reinstate the license by meeting the following requirements:

(A) - (C) (No change.)

(5) A person whose license has expired after September 1, 2009, and has been expired for one (1) year or more may renew the license by meeting the following requirements:

(A) retaking and passing the applicable examination;

(B) payment of any applicable fees, including a renewal fee that is equal to two times the normally required renewal fee; and

(C) completion of the mandatory continuing education requirements of §203.30(f)(2) of this chapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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O. C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: December 6, 2009
For further information, please call: (512) 936-2466

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS SUBCHAPTER F. EDUCATION, EXPERIENCE, EDUCATIONAL PROGRAMS, TIME PERIODS AND TYPE OF LICENSE

22 TAC §§535.61, 535.62, 535.64

The Texas Real Estate Commission (TREC) proposes amendments to §535.61, Examinations, §535.62, Acceptable Courses of Study, and §535.64, Accreditation of Schools and Approval of Courses and Instructors. The amendment to §535.61 would establish the pre-license examination pass rate for salespersons and brokers at 75%. The amendments to §535.62 and §535.64 would define how TREC-approved proprietary schools' passage rates are calculated and published by the commission and would implement the statutory requirement that schools demonstrate a 55% examination passage rate to renew their accreditation. In response to comments to previously proposed amendments to these rules, the proposed amendments would allow schools that offer correspondence courses in association with accredited colleges or universities to issue certificates of completion in the name of the TREC-approved school and to count the examination passage rates of students in those courses toward the school's overall passage rates. The proposed amendments further state that correspondence courses offered in association with accredited colleges or universities, like correspondence courses offered by accredited colleges and universities, do not require commission approval because all such courses must comply with the college or university's curriculum accreditation standards.

Devon V. Bijansky, Assistant General Counsel, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the amendments. There is no anticipated economic cost to persons who are required to comply with the proposed amendments. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the amendments.

Ms. Bijansky also has determined that, for each year of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing the new rules will be greater public availability of information regarding schools' examination passage rates, and an increased ability by the agency to ensure the quality of education offered by these schools.

Comments on the proposal may be submitted to Devon V. Bijansky, Assistant General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.61. Examinations.

(a) (No change.)

(b) Examinations required for any license issued by the commission will be conducted by the testing service with which the commission has contracted for the administration of examinations. The testing service shall schedule and conduct the examinations in the manner required by the contract between the commission and the testing service. To pass the salesperson or broker licensing examination, an applicant must attain a passing score of at least 75% in each section of the examination.

(c) - (g) (No change.)

§535.62. Acceptable Courses of Study.

(a) - (c) (No change.)

(d) A core real estate course also must meet each of the following requirements to be accepted.

(1) - (4) (No change.)

(5) For a correspondence course, the course must have been offered by or in association with an accredited college or university, and students receiving credit for the course must pass either:

(A) a proctored final examination administered under controlled conditions to positively identified students and graded by the instructor or, if the examination is being graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider; or

(B) an examination by use of a computer under conditions that satisfy the commission that the examinee is the same person who seeks course credit.

(6) If a correspondence course was offered by a proprietary school in association with an accredited college or university, the proprietary school has certified to the commission that the course was offered in accordance with the college or university's curriculum accreditation standards. Using the name of the proprietary school "in association with" the name of the college or university on the course completion certificate or electronic course submission constitutes certification to the commission that the course was offered in compliance with the college or university's curriculum accreditation standards.

(7) [~~(6)~~] For a course offered by an alternative delivery method, the course met the following requirements.

(A) The course must be certified by a distance learning certification center that is acceptable by the commission.

(B) The rationale for the education processes implemented in the course must be based on sound instructional strategies which have been systematically designed and proven effective through educational research and development. The basis and rationale for any proposed instructional approach must be specified in the application for approval. The following types of programs will not be approved:

(i) those which consist primarily of text material; or

(ii) those which primarily consist of questions similar to those on the state licensing examination.

(C) An approved instructor or the provider's coordinator/director shall grade the written course work.

(D) Every provider offering an approved course under this subsection shall:

(i) ensure that a qualified person is available to answer students' questions or provide assistance as necessary;

(ii) satisfy the commission that procedures are in place to ensure that the student who completes the work is the student who is enrolled in the course; and

(iii) certify students as successfully completing the course only if the student;

(I) has completed all instructional modules required to demonstrate mastery of the material;

(II) has attended any hours of live instruction and/or testing required for a given course; and

(III) has passed either:

(-a-) a proctored final examination administered under controlled conditions to positively identified students, at a location and by an official approved by the commission and graded by the instructor or, if the examination is being graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider; or

(-b-) an examination by use of a computer under conditions that satisfy the commission that the examinee is the same person who seeks credit.

(8) [~~(7)~~] The student must not have completed more than one course with substantially the same course content within a three year period.

(9) [~~(8)~~] The course did not primarily concern techniques or procedures utilized by a particular brokerage or organization.

(10) [~~(9)~~] For a classroom course, the course was offered in a location conducive to instruction that is separate and apart from the work area, such as a classroom, training room, conference room, or assembly hall.

(e) - (f) (No change.)

§535.64. Accreditation of Schools and Approval of Courses and Instructors.

(a) - (d) (No change.)

(e) Subsequent application for accreditation. No more than six months prior to the expiration of its current accreditation, a school may apply for accreditation for another five year period.

(1) - (3) (No change.)

(4) A school's passage rate will be calculated and published quarterly by dividing the number of that school's graduates, as defined in subsection (e)(2) of this section, who passed the examination on their first attempt in the five-year period ending on the last day of the previous quarter by the total number of the school's graduates who took the exam for the first time in the same period. If a school offers courses toward multiple license types, the exam results for that school will be calculated and posted by license type and aggregated into the school's overall passage rate for that period. The passage rate that will be used to determine whether the accreditation standard has been met is the most current aggregate rate published by the commission as of the date the commission receives the timely application for reaccreditation or, if the accreditation expired before being renewed, the most recent rate published by the commission as of the expiration date of the school's accreditation.

(5) In determining whether a school qualifies for reaccreditation based on its examination passage rate, the commission may consider a variety of factors, including the separate passage rates for sales, broker, and inspector applicants and trends within the school's passage rate over the five-year accreditation period,

(f) - (g) (No change.)

(h) Obtaining approval to offer course. An applicant shall submit Form ED 3-1 the first time approval is sought to offer a course. Once a course has been approved, no further approval is required for another accredited school to offer the same course. Prior to advertising or offering the course, however, the subsequent provider shall complete Form ED 3-1, file the form with the commission and receive written or oral acknowledgment from the commission that all necessary documentation has been filed. A school shall submit an instructor's manual for each proposed course. The commission may require a copy of the course materials and instructor's manual to be submitted for each previously approved course the school intends to offer. Subsequent providers shall offer the course as originally approved or as revised with the approval of the commission and shall use all materials required in the original or revised course. Each manual must comply with Form ED 7-1, Instructor Manual Guidelines. Schools may offer a course using an alternative delivery method such as computers if the course satisfies the requirements for such a course contained in §535.62(d)(7)[~~(6)~~] of this title (relating to Acceptable Courses of Study). For the purpose of approval of courses, a correspondence course offered in association with an accredited college or university in accordance with

§535.62(d)(6) of this title is equivalent to a correspondence course offered by an accredited college or university.

(i) - (o) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 21, 2009.

TRD-200904803
Devon V. Bijansky
Assistant General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: December 6, 2009
For further information, please call: (512) 465-3926

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CHAPTER 543. RULES RELATING TO THE PROVISIONS OF THE TEXAS TIMESHARE ACT

22 TAC §§543.4, 543.5, 543.12, 543.13

The Texas Real Estate Commission (TREC) proposes amendments to §543.4 concerning Forms, §543.5 concerning Violations, §543.12 concerning Renewal of Registration, and new §543.13 concerning Assumed Names.

The amendments to §543.4 would adopt by reference four amended forms, TSR 1-5, 2-5, 3-3, and 8-1. The changes to the forms correct typographical errors, and TSR 1-5 is amended to be consistent with recent amendments to the Texas Timeshare Act, Chapter 221, Texas Property Code enacted under Senate Bill (SB) 1036 during the 81st Legislative Session. The revisions remove references to the name and address of the person who prepared the operating budget, and remove language that used to be required in the contract of purchase but is no longer required under SB 1036. The amendment to §543.5 adds to the list of material violations failure to properly comply with requirements for filing an assumed name. The amendment to §543.12 adds subsection (d) to provide a 60-day time period in which a developer must respond to a request for additional information from TREC in connection with an application to renew a timeshare plan. New §543.13 provides a process and time period for which developers must file assumed names with the commission to comply with changes to the Timeshare Act made by SB 1036.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no anticipated economic effect on small businesses, micro-businesses or local or state employment as a result of implementing the sections.

Ms. DeHay also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be compliance with new statutory requirements. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments and new rule are proposed under the Texas Government Code, §221.024, which authorizes the Texas Real Estate Commission to prescribe and publish forms and adopt rules necessary to carry out the provisions of The Texas Timeshare Act.

The statute which is affected by this proposal is Texas Property Code, Chapter 221. No other statute, code or article is affected by the proposed amendments and new rule.

§543.4. Forms.

(a) The Texas Real Estate Commission adopts by reference revised Application to Register a Timeshare Plan, Form TSR 1-5 [4], approved by the commission in 2009 [2005]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

(b) The Texas Real Estate Commission adopts by reference revised Application to Amend a Timeshare Registration, Form TSR 2-5 [4], approved by the commission in 2009 [2005]. This form is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

(c) The Texas Real Estate Commission adopts by reference Application for Abbreviated Registration of a Timeshare Plan, Form TSR 3-3 [2], approved by the commission in 2009 [2008]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

(d) - (g) (No change.)

(h) The Texas Real Estate Commission adopts by reference Application to Renew the Registration of a Timeshare Plan, Form TSR 8-1 [0], approved by the commission [Commission] in 2009 [2006]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, www.trec.state.tx.us.

(i) - (j) (No change.)

§543.5. Violations.

(a) - (g) (No change.)

(h) It is a material violation of the Act for a developer to fail to properly file an assumed name as required by §221.037(b) of the Act or to fail to give the commission timely written notice of the developer's use of an assumed name.

§543.12. Renewal of Registration.

(a) - (c) (No change.)

(d) An application to renew a timeshare plan is considered void and is subject to no further evaluation or processing when the developer fails to provide information or documentation within sixty (60) days after the commission makes written request for correct or additional information or documentation.

§543.13. Assumed Names.

A developer who wishes to use an assumed name in business as permitted by §221.037(b) of the Texas Timeshare Act in lieu of using the full name of the developer shall notify the commission in writing at least 10 days prior to using the assumed name.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 21, 2009.

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Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: December 6, 2009
For further information, please call: (512) 465-3926

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PART 27. BOARD OF TAX PROFESSIONAL EXAMINERS

CHAPTER 621. ADMINISTRATION

22 TAC §621.1

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Licensing and Regulation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Licensing and Regulation (Department) proposes the repeal of existing 22 Texas Administrative Code (TAC), Chapter 621, §621.1 regarding the administration of the Board of Tax Professional Examiners.

Acts of the 81st Legislature, Regular Session, 2009, House Bill 2447 (HB 2447) transferred the regulation of property tax professionals from the Board of Tax Professional Examiners to the Texas Department of Licensing and Regulation effective September 1, 2009, amended Texas Occupations Code, Chapter 1151 relating to the regulation of property tax professionals, and abolished the Board of Tax Professional Examiners. Therefore, the Department proposes to repeal the Board of Tax Professional Examiners rules in order to reorganize and clarify the rules regulating property tax professionals under Title 16, Texas Administrative Code, relating to the rules of the Texas Department of Licensing and Regulation. The Department in a separate rulemaking action is proposing new rules at 16 TAC Chapter 94 that will replace the rules affected by the repeal.

William H. Kuntz, Jr., Executive Director has determined that for the first five-year period the proposed repeal is in effect there will be no cost to state or local government as a result of enforcing or administering the repeal.

Mr. Kuntz also has determined that for each year of the first-year period the proposed repeal is in effect, the public benefit will be reduced confusion because the Board of Tax Professional Examiners existing rules contain references to the Board of Tax Professional Examiners that is obsolete.

There will be no adverse economic effect on small or micro-business and to persons who are required to comply with the repeal.

Since the agency has determined that the repeal will have no adverse economic effect on small business preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002 are not required.

Comments on the repeal may be submitted to Caroline Jackson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register.*

The repeal is proposed under HB 2447, Acts of the 81st Texas Legislature and Texas Occupations Code, Chapters 51 and 1151, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the repeal are those set forth in Texas Occupations Code, Chapters 51 and 1151. No other statutes, articles, or codes are affected by the repeal.

§621.1. Powers and Duties.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 19, 2009.

TRD-200904765
William H. Kuntz, Jr.
Executive Director, Texas Department of Licensing and Regulation
Board of Tax Professional Examiners
Earliest possible date of adoption: December 6, 2009
For further information, please call: (512) 463-7348

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CHAPTER 623. REGISTRATION AND CERTIFICATION

22 TAC §§623.1 - 623.17

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Licensing and Regulation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Licensing and Regulation (Department) proposes the repeal of existing 22 Texas Administrative Code (TAC), Chapter 623, §§623.1 - 623.17 regarding the registration and certification of tax professional examiners.

Acts of the 81st Legislature, Regular Session, 2009, House Bill 2447 (HB 2447) transferred the regulation of property tax professionals from the Board of Tax Professional Examiners to the Texas Department of Licensing and Regulation effective September 1, 2009, amended Texas Occupations Code, Chapter 1151 relating to the regulation of property tax professionals, and abolished the Board of Tax Professional Examiners. Therefore, the Department proposes to repeal the Board of Tax Professional Examiners rules in order to reorganize and clarify the rules regulating property tax professionals under Title 16, Texas Administrative Code, relating to the rules of the Texas Department of Licensing and Regulation. The Department in a separate rulemaking action is proposing new rules at 16 TAC Chapter 94 that will replace the rules affected by the repeal.

William H. Kuntz, Jr., Executive Director has determined that for the first five-year period the proposed repeal is in effect there will be no cost to state or local government as a result of enforcing or administering the repeal.

Mr. Kuntz also has determined that for each year of the first-year period the proposed repeal is in effect, the public benefit will be reduced confusion because the Board of Tax Professional Examiners existing rules contain references to the Board of Tax Professional Examiners that is obsolete.

There will be no adverse economic effect on small or micro-business and to persons who are required to comply with the repeal.

Since the agency has determined that the repeal will have no adverse economic effect on small business preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002 are not required.

Comments on the repeal may be submitted to Caroline Jackson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register.*

The repeal is proposed under HB 2447, Acts of the 81st Texas Legislature and Texas Occupations Code, Chapters 51 and 1151, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the repeal are those set forth in Texas Occupations Code, Chapters 51 and 1151. No other statutes, articles, or codes are affected by the repeal.

§623.1. Registration: General.

§623.2. Eligibility To Register.

§623.3. Persons Required To Register.

§623.4. Persons Permitted to Register.

§623.5. Use of Titles.

§623.6. Classification of Registration.

§623.7. Field of Work.

§623.8. Qualifications for Certification as Registered Professional Appraiser (RPA).

§623.9. Qualifications for Certification as Registered Texas Assessor/Collector (RTA).

§623.10. Qualifications for Certification as Registered Texas Collector (RTC).

§623.11. Reclassification.

§623.12. Recertification.

§623.13. Base Date Adjustment in Classification.

§623.14. Certification and Recertification: General.

§623.15. Adjustment of Time Requirement.

§623.16. Notification Responsibilities of Registrant.

§623.17. Training for Chief Appraisers.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 19, 2009.

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William H. Kuntz, Jr.

Executive Director, Texas Department of Licensing and Regulation

Board of Tax Professional Examiners

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For further information, please call: (512) 463-7348

CHAPTER 624. EDUCATION

22 TAC §§624.1 - 624.11

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Licensing and Regulation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Licensing and Regulation (Department) proposes the repeal of existing 22 Texas Administrative Code (TAC), Chapter 624, §§624.1 - 624.11 regarding the education of tax professional examiners.

Acts of the 81st Legislature, Regular Session, 2009, House Bill 2447 (HB 2447) transferred the regulation of property tax professionals from the Board of Tax Professional Examiners to the Texas Department of Licensing and Regulation effective September 1, 2009, amended Texas Occupations Code, Chapter 1151 relating to the regulation of property tax professionals, and abolished the Board of Tax Professional Examiners. Therefore, the Department proposes to repeal the Board of Tax Professional Examiners rules in order to reorganize and clarify the rules regulating property tax professionals under Title 16, Texas Administrative Code, relating to the rules of the Texas Department of Licensing and Regulation. The Department in a separate rulemaking action is proposing new rules at 16 TAC Chapter 94 that will replace the rules affected by the repeal.

William H. Kuntz, Jr., Executive Director has determined that for the first five-year period the proposed repeal is in effect there will be no cost to state or local government as a result of enforcing or administering the repeal.

Mr. Kuntz also has determined that for each year of the first-year period the proposed repeal is in effect, the public benefit will be reduced confusion because the Board of Tax Professional Examiners existing rules contain references to the Board of Tax Professional Examiners that is obsolete.

There will be no adverse economic effect on small or micro-business and to persons who are required to comply with the repeal.

Since the agency has determined that the repeal will have no adverse economic effect on small business preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002 are not required.

Comments on the repeal may be submitted to Caroline Jackson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas

78711, or facsimile (512) 475-3032, or electronically: erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register.*

The repeal is proposed under HB 2447, Acts of the 81st Texas Legislature and Texas Occupations Code, Chapters 51 and 1151, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the repeal are those set forth in Texas Occupations Code, Chapters 51 and 1151. No other statutes, articles, or codes are affected by the repeal.

§624.1. Definitions.

§624.2. Curriculum.

§624.3. Content Outlines.

§624.4. Sponsors.

§624.5. Course Approval and Administration.

§624.6. Course Equivalency.

§624.7. Instructors.

§624.8. Evaluation.

§624.9. Guidance.

§624.10. Elective Courses.

§624.11. Continuing Education.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 19, 2009.

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William H. Kuntz, Jr.

Executive Director, Texas Department of Licensing and Regulation

Board of Tax Professional Examiners

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For further information, please call: (512) 463-7348

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CHAPTER 625. STANDARDS OF PROFESSIONAL PRACTICE

22 TAC §625.1

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Licensing and Regulation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Licensing and Regulation (Department) proposes the repeal of existing 22 Texas Administrative Code (TAC), Chapter 625, §625.1 regarding the standards of professional practice of tax professional examiners.

Acts of the 81st Legislature, Regular Session, 2009, House Bill 2447 (HB 2447) transferred the regulation of property tax professionals from the Board of Tax Professional Examiners to the Texas Department of Licensing and Regulation effective September 1, 2009, amended Texas Occupations Code, Chapter 1151 relating to the regulation of property tax professionals, and abolished the Board of Tax Professional Examiners. Therefore, the Department proposes to repeal the Board of Tax Professional Examiners rules in order to reorganize and clarify the rules regulating property tax professionals under Title 16, Texas Administrative Code, relating to the rules of the Texas Department of Licensing and Regulation. The Department in a separate rulemaking action is proposing new rules at 16 TAC Chapter 94 that will replace the rules affected by the repeal.

William H. Kuntz, Jr., Executive Director has determined that for the first five-year period the proposed repeal is in effect there will be no cost to state or local government as a result of enforcing or administering the repeal.

Mr. Kuntz also has determined that for each year of the first-year period the proposed repeal is in effect, the public benefit will be reduced confusion because the Board of Tax Professional Examiners existing rules contain references to the Board of Tax Professional Examiners that is obsolete.

There will be no adverse economic effect on small or micro-business and to persons who are required to comply with the repeal.

Since the agency has determined that the repeal will have no adverse economic effect on small business preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002 are not required.

Comments on the repeal may be submitted to Caroline Jackson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register.*

The repeal is proposed under HB 2447, Acts of the 81st Texas Legislature and Texas Occupations Code, Chapters 51 and 1151, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the repeal are those set forth in Texas Occupations Code, Chapters 51 and 1151. No other statutes, articles, or codes are affected by the repeal.

§625.1. Standards of Professional Practice for Tax Assessors.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 19, 2009.

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Board of Tax Professional Examiners

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For further information, please call: (512) 463-7348

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CHAPTER 627. ASSESSOR'S CODE OF ETHICS

22 TAC §627.1

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Licensing and Regulation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Licensing and Regulation (Department) proposes the repeal of existing 22 Texas Administrative Code (TAC), Chapter 627, §627.1 regarding the assessor's code of ethics of tax professional examiners.

Acts of the 81st Legislature, Regular Session, 2009, House Bill 2447 (HB 2447) transferred the regulation of property tax professionals from the Board of Tax Professional Examiners to the Texas Department of Licensing and Regulation effective September 1, 2009, amended Texas Occupations Code, Chapter 1151 relating to the regulation of property tax professionals, and abolished the Board of Tax Professional Examiners. Therefore, the Department proposes to repeal the Board of Tax Professional Examiners rules in order to reorganize and clarify the rules regulating property tax professionals under Title 16, Texas Administrative Code, relating to the rules of the Texas Department of Licensing and Regulation. The Department in a separate rulemaking action is proposing new rules at 16 TAC Chapter 94 that will replace the rules affected by the repeal.

William H. Kuntz, Jr., Executive Director has determined that for the first five-year period the proposed repeal is in effect there will be no cost to state or local government as a result of enforcing or administering the repeal.

Mr. Kuntz also has determined that for each year of the first-year period the proposed repeal is in effect, the public benefit will be reduced confusion because the Board of Tax Professional Examiners existing rules contain references to the Board of Tax Professional Examiners that is obsolete.

There will be no adverse economic effect on small or micro-business and to persons who are required to comply with the repeal.

Since the agency has determined that the repeal will have no adverse economic effect on small business preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002 are not required.

Comments on the repeal may be submitted to Caroline Jackson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register.*

The repeal is proposed under HB 2447, Acts of the 81st Texas Legislature and Texas Occupations Code, Chapters 51 and 1151, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the repeal are those set forth in Texas Occupations Code, Chapters 51 and 1151. No other statutes, articles, or codes are affected by the repeal.

§627.1. Statement of Code.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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William H. Kuntz, Jr.
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For further information, please call: (512) 463-7348

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CHAPTER 628. ETHICAL CONDUCT

22 TAC §§628.1 - 628.7

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Licensing and Regulation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Licensing and Regulation (Department) proposes the repeal of existing 22 Texas Administrative Code (TAC), Chapter 628, §§628.1 - 628.7 regarding the ethical conduct of tax professional examiners.

Acts of the 81st Legislature, Regular Session, 2009, House Bill 2447 (HB 2447) transferred the regulation of property tax professionals from the Board of Tax Professional Examiners to the Texas Department of Licensing and Regulation effective September 1, 2009, amended Texas Occupations Code, Chapter 1151 relating to the regulation of property tax professionals, and abolished the Board of Tax Professional Examiners. Therefore, the Department proposes to repeal the Board of Tax Professional Examiners rules in order to reorganize and clarify the rules regulating property tax professionals under Title 16, Texas Administrative Code, relating to the rules of the Texas Department of Licensing and Regulation. The Department in a separate rulemaking action is proposing new rules at 16 TAC Chapter 94 that will replace the rules affected by the repeal.

William H. Kuntz, Jr., Executive Director has determined that for the first five-year period the proposed repeal is in effect there will be no cost to state or local government as a result of enforcing or administering the repeal.

Mr. Kuntz also has determined that for each year of the first-year period the proposed repeal is in effect, the public benefit will be reduced confusion because the Board of Tax Professional Examiners existing rules contain references to the Board of Tax Professional Examiners that is obsolete.

There will be no adverse economic effect on small or micro-business and to persons who are required to comply with the repeal.

Since the agency has determined that the repeal will have no adverse economic effect on small business preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002 are not required.

Comments on the repeal may be submitted to Caroline Jackson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register.*

The repeal is proposed under HB 2447, Acts of the 81st Texas Legislature and Texas Occupations Code, Chapters 51 and 1151, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the repeal are those set forth in Texas Occupations Code, Chapters 51 and 1151. No other statutes, articles, or codes are affected by the repeal.

§628.1. General.

§628.2. Definitions.

§628.3. Improper Influence.

§628.4. Conflict of Interest.

§628.5. Unfair Treatment, Discrimination.

§628.6. Abuse of Powers.

§628.7. Use of Titles.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 19, 2009.

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William H. Kuntz, Jr.
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For further information, please call: (512) 463-7348

CHAPTER 629. PENALTIES, SANCTIONS, AND HEARINGS

22 TAC §§629.1 - 629.18

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Licensing and Regulation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Licensing and Regulation (Department) proposes the repeal of existing 22 Texas Administrative Code (TAC), Chapter 629, §§629.1 - 629.18 regarding penalties, sanctions, and hearings of tax professional examiners.

Acts of the 81st, Legislature, Regular Session, 2009, House Bill 2447 (HB 2447) transferred the regulation of property tax professionals from the Board of Tax Professional Examiners to the Texas Department of Licensing and Regulation effective September 1, 2009, amended Texas Occupations Code, Chapter 1151 relating to the regulation of property tax professionals, and abolished the Board of Tax Professional Examiners. Therefore, the Department proposes to repeal the Board of Tax Professional Examiners rules in order to reorganize and clarify the rules regulating property tax professionals under Title 16, Texas Administrative Code, relating to the rules of the Texas Department of Licensing and Regulation. The Department in a separate rulemaking action is proposing new rules at 16 TAC Chapter 94 that will replace the rules affected by the repeal.

William H. Kuntz, Jr., Executive Director has determined that for the first five-year period the proposed repeal is in effect there will be no cost to state or local government as a result of enforcing or administering the repeal.

Mr. Kuntz also has determined that for each year of the first-year period the proposed repeal is in effect, the public benefit will be reduced confusion because the Board of Tax Professional Examiners existing rules contain references to the Board of Tax Professional Examiners that is obsolete.

There will be no adverse economic effect on small or micro-business and to persons who are required to comply with the repeal.

Since the agency has determined that the repeal will have no adverse economic effect on small business preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002 are not required.

Comments on the repeal may be submitted to Caroline Jackson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register.*

The repeal is proposed under HB 2447, Acts of the 81st Texas Legislature and Texas Occupations Code, Chapters 51 and 1151, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the repeal are those set forth in Texas Occupations Code, Chapters 51 and 1151. No other statutes, articles, or codes are affected by the repeal.

§629.1. Preservation of Rights.

§629.2. Refusal To Register and Cancellation of Registration.

§629.3. Suspension of Registration.

§629.4. Revocation of Registration.

§629.5. Complaint Procedure.

§629.6. Hearing Procedure (Suspension or Revocation).

§629.7. Filing and Notices.

§629.8. Agreement To Be in Writing.

§629.9. Amendments.

§629.10. Matters Before the Board.

§629.11. Place and Nature of Hearing.

§629.12. Notice and Hearing.

§629.13. Dismissal without Hearing.

§629.14. Rules of Evidence.

§629.15. Applicability of Administrative Procedure Act.

§629.16. Costs Pertaining to Hearings.

§629.17. Hearing Record.

§629.18. Corrections to Transcript.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 19, 2009.

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William H. Kuntz, Jr.
Executive Director, Texas Department of Licensing and Regulation
Board of Tax Professional Examiners
Earliest possible date of adoption: December 6, 2009
For further information, please call: (512) 463-7348

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CHAPTER 630. EFFECTIVE DATES

22 TAC §630.1

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Licensing and Regulation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Licensing and Regulation (Department) proposes the repeal of existing 22 Texas Administrative Code (TAC), Chapter 630, §630.1 regarding effective date requirements of tax professional examiners.

Acts of the 81st, Legislature, Regular Session, 2009, House Bill 2447 (HB 2447) transferred the regulation of property tax professionals from the Board of Tax Professional Examiners to the Texas Department of Licensing and Regulation effective September 1, 2009, amended Texas Occupations Code, Chapter 1151 relating to the regulation of property tax professionals, and abolished the Board of Tax Professional Examiners. Therefore, the Department proposes to repeal the Board of Tax Professional Examiners rules in order to reorganize and clarify the rules regulating property tax professionals under Title 16, Texas Administrative Code, relating to the rules of the Texas Department of Licensing and Regulation. The Department in a separate rulemaking action is proposing new rules at 16 TAC Chapter 94 that will replace the rules affected by the repeal.

William H. Kuntz, Jr., Executive Director has determined that for the first five-year period the proposed repeal is in effect there will be no cost to state or local government as a result of enforcing or administering the repeal.

Mr. Kuntz also has determined that for each year of the first-year period the proposed repeal is in effect, the public benefit will be reduced confusion because the Board of Tax Professional Examiners existing rules contain references to the Board of Tax Professional Examiners that is obsolete.

There will be no adverse economic effect on small or micro-business and to persons who are required to comply with the repeal.

Since the agency has determined that the repeal will have no adverse economic effect on small business preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002 are not required.

Comments on the repeal may be submitted to Caroline Jackson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register.*

The repeal is proposed under HB 2447, Acts of the 81st Texas Legislature and Texas Occupations Code, Chapters 51 and 1151, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the repeal are those set forth in Texas Occupations Code, Chapters 51 and 1151. No other statutes, articles, or codes are affected by the repeal.

§630.1. Requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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William H. Kuntz, Jr.
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Board of Tax Professional Examiners
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For further information, please call: (512) 463-7348

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CHAPTER 631. ADMINISTRATIVE PROCEDURES

22 TAC §§631.1 - 631.3

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Licensing and Regulation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Licensing and Regulation (Department) proposes the repeal of existing 22 Texas Administrative Code (TAC), Chapter 631, §§631.1 - 631.3 regarding the administrative procedures of tax professional examiners.

Acts of the 81st, Legislature, Regular Session, 2009, House Bill 2447 (HB 2447) transferred the regulation of property tax professionals from the Board of Tax Professional Examiners to the Texas Department of Licensing and Regulation effective September 1, 2009, amended Texas Occupations Code, Chapter 1151 relating to the regulation of property tax professionals, and abolished the Board of Tax Professional Examiners. Therefore, the Department proposes to repeal the Board of Tax Professional Examiners rules in order to reorganize and clarify the rules regulating property tax professionals under Title 16, Texas Administrative Code, relating to the rules of the Texas Department of Licensing and Regulation. The Department in a separate rulemaking action is proposing new rules at 16 TAC Chapter 94 that will replace the rules affected by the repeal.

William H. Kuntz, Jr., Executive Director has determined that for the first five-year period the proposed repeal is in effect there will be no cost to state or local government as a result of enforcing or administering the repeal.

Mr. Kuntz also has determined that for each year of the first-year period the proposed repeal is in effect, the public benefit will be reduced confusion because the Board of Tax Professional Examiners existing rules contain references to the Board of Tax Professional Examiners that is obsolete.

There will be no adverse economic effect on small or micro-business and to persons who are required to comply with the repeal.

Since the agency has determined that the repeal will have no adverse economic effect on small business preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002 are not required.

Comments on the repeal may be submitted to Caroline Jackson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register.*

The repeal is proposed under HB 2447, Acts of the 81st Texas Legislature and Texas Occupations Code, Chapters 51 and 1151, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the repeal are those set forth in Texas Occupations Code, Chapters 51 and 1151. No other statutes, articles, or codes are affected by the repeal.

§631.1. General.

§631.2. Persons Certified as Registered Professional Assessor under Article 7244b.

§631.3. Classification Actions by Board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 19, 2009.

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William H. Kuntz, Jr.

Executive Director, Texas Department of Licensing and Regulation

Board of Tax Professional Examiners

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For further information, please call: (512) 463-7348

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TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 25. MEMBERSHIP CREDIT

SUBCHAPTER B. COMPENSATION

34 TAC §25.21

The Teacher Retirement System of Texas (TRS) proposes amendments to §25.21, relating to Compensation Subject to Deposit and Credit. This rule addresses the types of compensation that are creditable for purposes of determining TRS member contributions and benefits. The amendments are proposed to reflect the legislative elimination of an incentive-award program established by state law under which an award recipient could have earned creditable compensation as a TRS member.

In §105 of House Bill (H.B.) 3646, 81st Legislature, Regular Session (2009) (the education finance bill), the legislature eliminated the incentive-award program for student achievement under Subchapter N of Chapter 21 of the Education Code, which the commissioner of education administered as the Texas Educator Excellence Grants (TEEG) program. In §81 of H.B. 3646, the legislature made corresponding changes to the law governing TRS-creditable compensation, §822.201 of the Government Code, to delete a reference to compensation paid under that program. TRS proposes amending the rule on creditable compensation, §25.21, to reflect the statutory change. Compensation earned before the elimination of the TEEG program would continue to be creditable by TRS under the law as it existed before September 1, 2009, the effective date of the legislature's repeal of the statutes authorizing the program.

Ken Welch, TRS Chief Financial Officer, estimates that for each year of the first five years the proposed rule will be in effect, enforcing or administering the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments. Mr. Welch explains that any fiscal impact to the state or the TRS pension trust fund is negligible, is the result of the statutory change, and is not attributable to the proposed amendment of §25.21, which simply conforms the rule to the legislative repeal of the authorization for the affected incentive program.

For each year of the first five years that the proposed rule amendments will be in effect, Brian Guthrie, TRS Deputy Director, has determined that the public benefits expected as a result of the adoption of the proposed amendments will be to update the rule in conformity with current statutory provisions and thereby to clarify what types of monetary compensation are creditable for purposes of determining TRS member contributions and benefits. Mr. Guthrie and Mr. Welch have determined that for each year of the first five years the proposed rule amendments are in effect, any economic cost to persons required to comply with the amended rule will be the result of the statutory change and not because of the amended rule, which TRS proposes simply to conform it to the legislative enactment. There will be no measurable impact on a local economy or local employment because of the rule proposal, and, therefore, no local employment impact statement is required under §2001.022 of the Government Code. Moreover, the proposed amendments will have no direct adverse economic effect on small businesses or micro-businesses within TRS's regulatory authority, and, therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, TRS Executive Director, 1000 Red River Street, Austin, Texas 78701. To be considered, written comments must be received by TRS no later than thirty (30) days after publication of this notice and proposed rule.

Statutory Authority: The amended section is proposed under the following: §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system.

Cross-reference to Statute: Act of June 1, 2009, 81st Leg., R.S., ch. 1328, H.B. 3646, §81, 2009 Tex. Sess. Law Serv. 4171,

4206 (Vernon) (to be codified as an amendment to Tex. Gov't Code Ann. §822.201(b)); Act of May 12, 2006, 79th Leg., 3d C.S., ch. 5, §4.08, secs. 21.651 - 21.658, 2006 Tex. Gen. Laws 45, 82, *repealed by* Act of June 1, 2009, 81st Leg., R.S., ch. 1328, H.B. 3646, §105(a)(1), 2009 Tex. Sess. Law Serv. 4171, 4211 (Vernon).

§25.21. Compensation Subject to Deposit and Credit.

(a) - (b) (No change.)

(c) The following types of monetary compensation are to be included in annual compensation:

(1) - (6) (No change.)

(7) compensation received under the relevant parts of the [~~awards for student achievement program under Subchapter N of Chapter 21, Education Code, the~~] educator excellence awards program under Subchapter O of Chapter 21, Education Code, or a mentoring program under §21.458, Education Code, that authorize compensation for service, and compensation earned under the awards for student achievement program under Subchapter N of Chapter 21, Education Code, prior to the repeal of statutory provisions authorizing that program;

(8) - (10) (No change.)

(d) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 26, 2009.

TRD-200904837
Brian Guthrie
Deputy Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 6, 2009
For further information, please call: (512) 542-6438

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SUBCHAPTER L. OTHER SPECIAL SERVICE CREDIT

34 TAC §25.163

The Teacher Retirement System of Texas (TRS) proposes amendments to §25.163, relating to Service Credit Purchase. This rule and former §823.405 of the Government Code, relating to Credit Purchase Option, permitted the purchase of up to three years of additional service credit. In 2005, the legislature repealed §823.405 effective January 1, 2006. Under the terms of the repeal, service credit was required to have been purchased no later than December 31, 2005, or an installment payment agreement must have been entered into by that date. TRS members who entered into installment agreements have now either completed or abandoned their purchases.

TRS proposes the amendment of §25.163 to delete the detailed provisions, including actuarial cost tables, that are no longer needed because members are no longer permitted to purchase this type of service credit. The proposed amended section retains references to the use of this service credit for TRS-Care eligibility purposes. The proposed section also includes a short new provision stating that service credit purchased under former §823.405 of the Government Code may be used for retirement benefit purposes to the extent allowed by law.

Ken Welch, TRS Chief Financial Officer, estimates that for each year of the first five years the proposed rule will be in effect, enforcing or administering the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments. Mr. Welch also states that any fiscal impact to the state or the TRS pension trust fund is the result of the 2005 statutory change and is not attributable to the proposed amendment of §25.163, which simply conforms the rule to the legislative repeal of the authorization for the purchase of additional service credit.

For each year of the first five years that the proposed rule amendments will be in effect, Brian Guthrie, TRS Deputy Director, has determined that the public benefits expected as a result of the adoption of the proposed amendments will be to update the rule in conformity with current statutory provisions. Mr. Guthrie and Mr. Welch have determined that for each year of the first five years the proposed rule amendments are in effect, there will be no economic cost to persons required to comply with the amended rule because the proposed amendments simply conform the rule to the 2005 legislative enactment and eligible persons who sought to purchase service credit under former §823.405 of the Government Code have either satisfied or abandoned their purchase agreement by the anticipated effective date of the proposed rule. There will be no measurable impact on a local economy or local employment because of the rule proposal, and, therefore, no local employment impact statement is required under §2001.022 of the Government Code. Moreover, the proposed amendments will have no direct adverse economic effect on small businesses or micro-businesses within TRS's regulatory authority, and, therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, TRS Executive Director, 1000 Red River Street, Austin, Texas 78701. To be considered, written comments must be received by TRS no later than thirty (30) days after publication of this notice and proposed rule.

Statutory Authority: The amended section is proposed under the following: §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system.

Cross-reference to Statute: Act of May 27, 2001, 77th Leg., R.S., ch. 1229, §6, sec. 823.405, 2001 Tex. Gen. Laws 2811, 2812, *repealed by* Act of May 27, 2005, 79th Leg. R.S., ch. 1359, §§55(b), 62, 63(c), 2005 Tex. Gen. Laws 4236, 4253-54.

§25.163. Service Credit Purchase.

Service credit purchased under the former provisions of Government Code §823.405, repealed effective January 1, 2006, may be used for retirement benefit purposes to the extent allowed by law. Service credit purchased under the former provisions of Government Code §823.405, repealed effective January 1, 2006, may be used to determine eligibility for the Texas Public School Retired Employees Group Insurance Program (TRS-Care) to the extent permitted under Chapter 1575, Texas Insurance Code.

[~~(a) Effective September 1, 2001, an eligible member may purchase one, two or three years of equivalent membership service credit in the Teacher Retirement System of Texas ("TRS") in accordance with Government Code, §823.405 and subject to the approval of TRS and to any plan qualification requirements and limits under the Internal Rev-~~

enue Code of 1986, as amended from time to time. A member is eligible to establish up to three years of equivalent membership service credit if, at the time of the purchase, the member has at least seven years of actual membership service in TRS. Service credit must be purchased no later than December 31, 2005, by payment in full to TRS or by filing a completed and signed installment payment agreement with TRS. After December 31, 2005, purchase of this service credit will not be available due to the repeal of Government Code, §823.405, effective January 1, 2006. Installment agreements that are terminated, including by failure to pay amounts required under the agreement, will result in the permanent loss of eligibility to purchase this service credit after December 31, 2005.]

[(b) "Actual membership service" has the meaning given to "membership service" in Government Code, §821.001(11), and means service during a time that a person is both an employee, as defined in Government Code, §821.001(6), and a member of the retirement system.]

[(c) Equivalent membership service credit under Government Code, §823.405 may be established by depositing with TRS the amounts described in this subsection. For each year of equivalent membership service credit described in this section and approved by TRS, the eligible member must deposit the actuarial present value, at the time of deposit, of the additional standard retirement annuity benefits that would be attributable to the service credit to be purchased under this section. Upon receipt by TRS of the required amount, the member will be credited with the additional year(s) of service credit purchased up to the maximum years of service credit allowed under Government Code, §823.405.]

[(d) To calculate these amounts, TRS will use the cost factors obtained from the three Service Purchase Tables furnished by the TRS actuary of record. Each of the tables cross-references the member's age in rows with years of credited service (before purchase) in columns. The intersection of the participant's age and service is the cost per $1,000 of salary. When an eligible member's service credit exceeds the last column for years of service credit on the tables, the applicable cost factor is found at the intersection of the member's age and the last column for years of service credit. TRS will calculate the cost to purchase service under this section by dividing the salary by 1000 and multiplying the resulting quotient by the appropriate cost factor obtained from the tables. Table 1 sets forth the cost, per $1,000 of salary, to purchase one year of service. Table 2 sets forth the cost, per $1,000 of salary, to purchase two years of service. Table 3 sets forth the cost, per $1,000 of salary, to purchase three years of service. For purposes of this calculation, the term "salary" is defined as follows:]

[(1) For the upper region of each table (where the factors appear above the line in italics), salary is the greater of current annual salary or the average of the member's highest three years of compensation; and]

[(2) For the lower region of each table (where the factors appear below the line in bold), salary is the average of the member's highest three years of compensation. A member's highest three years of compensation shall be calculated as if the member were retiring at the time the service credit is purchased. The lower region of each table (where factors appear below the line in bold) reflects those age and service combinations where the purchase of service credit results in the immediate eligibility of the member for unreduced retirement benefits.]

[Figure 1: 34 TAC 25.163(d)(2)]
[Figure 2: 34 TAC 25.163(d)(2)]
[Figure 3: 34 TAC 25.163(d)(2)]

[(e) The purchase cost described in subsection (d) of this section assumes a lump-sum deposit will be made. If deposits are made over a period of time as allowed by TRS, the purchase cost will be adjusted to reflect the actuarial present value of the benefits attributable to the purchased service credit.]

[(f) Service credit purchased under this section may be used to determine eligibility for the Texas Public School Retired Employees Group Insurance Program (TRS-Care) to the extent permitted under Chapter 1575, Texas Insurance Code.]

[(g) Payments for TRS service credit obtained through service credit purchase shall be paid in a manner consistent with any applicable limitations of 26 U.S.C. §415, including any applicable limitations on payments as a percentage of compensation of the participant from the employer for the school year in which the payments are sought to be made, pursuant to Internal Revenue Code §415. A member, or a beneficiary of a member if service is sought to be established after the death of the member, may not be permitted to purchase TRS service credit under this section if payments exceed applicable limitations on contributions.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 26, 2009.

TRD-200904838
Brian Guthrie
Deputy Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 6, 2009
For further information, please call: (512) 542-6438

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 213. PRACTICE AND PROCEDURE

22 TAC §213.32

The Texas Board of Nursing withdraws the emergency amendments to §213.32 which appeared in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6199).

Filed with the Office of the Secretary of State on October 26, 2009.

TRD-200904842
Jena Abel
Assistant General Counsel
Texas Board of Nursing
Effective date: November 15, 2009
For further information, please call: (512) 305-6822

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22 TAC §213.33

The Texas Board of Nursing withdraws the proposed amendments to §213.33 which appeared in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6255).

Filed with the Office of the Secretary of State on October 27, 2009.

TRD-200904860
Jena Abel
Assistant General Counsel
Texas Board of Nursing
Effective date: October 27, 2009
For further information, please call: (512) 305-6822

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 1. MEDICAID PROCEDURES FOR PROVIDERS

1 TAC §354.1003

The Texas Health and Human Services Commission (HHSC) adopts amended §354.1003, in Title 1, Part 15, Chapter 354, Subchapter A, Division 1, related to time limits for submitted claims for Medicaid school based services, without changes to the proposed text as published in the July 31, 2009, issue of the *Texas Register* (34 TexReg 4969) and will not be republished.

Background and Justification

The current cost reporting year for the state's school based health services program, known in Texas as the School Health and Related Services program (SHARS), is based on the state's fiscal year (September to August). The Centers for Medicare and Medicaid Services (CMS) approved Texas' request to base the cost reporting year on the federal fiscal year (October to September). HHSC requested this change to align SHARS cost reporting quarters with reporting for additional SHARS requirements and other Medicaid programs. As a result, HHSC will base the claims filing deadline on the federal fiscal year.

Comments

HHSC did not receive comments regarding the proposed rule during the 30-day comment period, which included a public hearing on August 20, 2009.

Legal Authority

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 26, 2009.

TRD-200904839
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: November 15, 2009
Proposal publication date: July 31, 2009
For further information, please call: (512) 424-6900

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DIVISION 11. GENERAL ADMINISTRATION

1 TAC §354.1149

The Texas Health and Human Services Commission (HHSC) adopts amendments to §354.1149, Exclusions and Limitations, without changes to the proposed text as published in the August 14, 2009, issue of the *Texas Register* (34 TexReg 5453) and will not be republished.

Background and Justification

Currently, adults in Medicaid managed care plans receive annual preventive well exams as a Medicaid benefit; however, this is not a benefit for adults receiving Medicaid through fee-for-service or Primary Care Case Management. HHSC proposed to add adult preventive services as a benefit for all eligible adults. This requires amending §354.1149 to remove adult preventive services from the list of Medicaid excluded services. The benefit will include preventive services recommended by the U.S. Preventive Services Task Force. The rule conforms with legislative emphasis on preventive health services. The new benefit will take effect on January 1, 2010.

The amendment also updated the rule to reflect current HHSC policies and procedures regarding a number of other Medicaid benefit exclusions and limitations.

Additional changes were proposed to update terms, remove obsolete language, clarify language, and re-format the rule.

Comments

The 30-day comment period ended September 13, 2009. During this period, HHSC did not receive any comments regarding the proposed rule amendments.

Legal Authority

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Human Resources Code §32.021 and Texas Government Code §531.021(a),

which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 26, 2009.

TRD-200904840
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: November 15, 2009
Proposal publication date: August 14, 2009
For further information, please call: (512) 424-6900

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 2. TEXAS BOOTSTRAP LOAN PROGRAM

10 TAC §§2.1 - 2.17

The Texas Department of Housing and Community Affairs (Department) adopts the repeal of 10 TAC Chapter 2, §§2.1 - 2.17, concerning the Texas Bootstrap Loan Program, without changes to the proposal as published in the August 7, 2009, issue of the *Texas Register* (34 TexReg 5262) and will not be republished.

The adopted repeal will allow the Department to make changes to the existing rules to ensure compliance with all statutory requirements, formalize existing policy and guidelines and include revisions of necessary policy and administrative changes to further enhance operations.

No comments were received regarding the proposed repeal.

The Board approved the final order adopting this repeal on October 15, 2009.

The repeal is adopted pursuant to the authority of the Texas Government Code, Chapter 2306 which provide the Department the authority to adopt rules governing the administration of the Department and its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 26, 2009.

TRD-200904852
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: November 15, 2009
Proposal publication date: August 7, 2009
For further information, please call: (512) 475-3916

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10 TAC §§2.1 - 2.13

The Texas Department of Housing and Community Affairs (Department) adopts new 10 TAC Chapter 2, §§2.1 - 2.13, concerning the Texas Bootstrap Loan Program. Sections 2.1 - 2.10, 2.12, and 2.13 are adopted with changes to the proposed text as published in the August 7, 2009, issue of the *Texas Register* (34 TexReg 5263). Section 2.11 is adopted without changes and will not be republished.

The new chapter implements changes that will improve the Texas Bootstrap Loan Program and implement changes that are consistent with other program rules.

Written comments on the proposed rules were accepted by mail, e-mail, and facsimile through September 7, 2009.

SUMMARY OF COMMENTS, STAFF RESPONSE AND BOARD ACTION.

Public comments and the Department's responses are presented in the order in which the sections appear in the proposed Chapter 2, starting with §2.2 and ending with §2.12. Following the section number is the title of the section as it appears in the rule. Each number corresponds to the person who commented on the particular rule section. The key relating each number to a particular commenter is listed below. Following the identification of the related commenter is a summary of the comment and staff's response, including the reasons why the Department agreed or disagreed with the comment and a statement of the factual basis for the new chapter.

Public comments on the proposed amendments were received by: (51) Lower Valley Housing Corporation; (52) Habitat for Humanity Laredo; (53) FUTURO Communities; (54) Community Development Corporation of Brownsville; (55) La Gloria Development Corporation; (56) Reliable Real Estate Inspection Service; (57) Texas Low Income Housing Information Service.

§2.2(21). Definitions--Owner-Builder.

COMMENT (57): The commenter stated it does not see a reason to prohibit contract for deed buyers who happened to contract after a particular date from participating in Bootstrap.

STAFF RESPONSE: Staff did not recommend amendments. Section 2306.751 of the Texas Government Code, defines Owner-Builder as a person, other than a person who owns or operates a construction business, an Owner-Builder as one who owns or purchases a piece of real property through a warranty deed or a warranty deed and deed of trust; or is purchasing a piece of real property under a contract for deed entered into before January 1, 1999 and who undertakes to make improvements to that property.

§2.3(e). Allocation of Funds.

COMMENT (57): The commenter stated that a semi colon or comma should separate the reference to the HOME program from the reference to the housing trust fund.

STAFF RESPONSE: Staff concurred and recommended the following revision:

§2.3(e) Each state fiscal year the Department shall transfer at least $3 million to the Texas Bootstrap Loan Program revolving fund from money received under the federal HOME Investment Partnerships Program established under Title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12701,

et seq.), from money in the housing trust fund, or from money appropriated by the legislature to the Department pursuant to §2306.7581 of the Texas Government Code.

§2.7(c). Distribution of Funds--Reservation Procedures.

COMMENT (51, 52, 54, 55, 57): The commenters stated many concerns regarding the ten Reservations under the two-thirds set-aside. The commenters believe it will limit them to ten houses per year and would prevent them from building more than ten houses which many believed was not as cost effective as a direct limit on the dollar amounts of outstanding Reservations and a limit on the number of units unnecessarily restricts their opportunity to reach more households.

STAFF RESPONSE: Staff concurred and recommended the following revision:

§2.7(c) Reservation procedures. Reservations of funds are available to the Nonprofit Owner-Builder Housing Provider (NOHP) on first-come, first-served basis. In all cases the NOHP must register each Owner-Builder applicant on the Texas Bootstrap Loan Program Reservation system via the Department's website. Maximum Reservations allowed for an NOHP at any given time may not exceed $900,000 in total loan Reservations in the two-thirds set-aside as noted in §2306.753(d) of the Texas Government Code. The NOHP may not exceed $450,000 in total loan Reservations at any given time under the Balance of the State set-aside. The NOHP may enter additional Reservations after a loan has closed and all required closing documents have been submitted to the Department for funding.

§2.7(e). Distribution of Funds--Modification of loan Reservation.

COMMENT (51, 57): The commenters stated NOHPs should be able to withdraw or remove Owner-Builders due to nonperformance under the self-help agreement or other reasons that would prohibit the completion of construction or rehabilitation of the home. This places an undo burden on the NOHP to hold the property until funds become available again.

STAFF RESPONSE: Staff concurred and recommended the following revision:

§2.7(e) Modification of Loan Reservation. After a Reservation has been secured and the Owner-Builder applicant has been deemed eligible to participate in the Program, the NOHP must notify the Department of any changes to the Owner-Builder application, such as a cancellation, change in the sales price or change in the loan amount. The NOHP will not be permitted to change, exchange, replace or switch Owner-Builder applicants once the loan has been registered; unless construction has commenced and one of the following events has occurred: death, illness, divorce, loss of income, nonperformance by Owner-Builder applicant or for other acceptable reasons, as approved by the Department, where the Owner-Builder applicant is unable to perform.

§2.8(b) and 2.8(c)(3). Criteria for Funding.

COMMENT (51, 57): The commenters requested clarification regarding the submission of the Reservation and documents required by the Department. The commenters also requested the Department provide a time line for its review of the documentation submitted by the NOHP. The commenters also stated that the Department proposes to require outside parties to submit documents under deadlines. However, the Department does not guarantee similar timeliness for itself. The commenters recommend that the Department provide times in number of days to Bootstrap providers for reviews and document preparation conducted by the Department.

STAFF RESPONSE: The Department endeavors to respond in a timely basis usually within ten (10) business days. However, it's unclear what recourse will be utilized if review period is not met by the Department since many of the Bootstrap requirements are statutory. Staff recommended the following revisions:

§2.8(b) A nonprofit organization must have been certified by the Department as a Nonprofit Owner-Builder Housing Provider (NOHP) and must have executed a Loan Origination Agreement to be eligible to submit a Reservation on behalf of an Owner-Builder applicant. A Reservation containing false information and/or all documents required in the Program Manual are not received within ten (10) business days after the Reservation has been entered into the system will be disqualified. The Department staff will review and process all Owner-Builder applications in the order received. If the Department receives more than one Owner-Builder applications on the same day the applications will be processed in the order entered into the Reservation system. The NOHP will be notified in writing of the Department's determination.

§2.8(c)(3) Reservations and/or applications submitted on behalf of an Owner-Builder applicant must comply with all applicable Texas Bootstrap Loan Program requirements or regulations established in these rules. Reservations and/or applications submitted on behalf of an Owner-Builder applicant that do not comply with such requirements will be disqualified. The NOHP will be notified in writing of any cancelled and/or disqualified Reservations and/or applications submitted on behalf of an Owner-Builder applicant.

§2.8(c)(5). Criteria for Funding.

COMMENT (51): The commenter states that it would be impossible for any NOHP to plan its program and put all its funding together with private lenders if the Department had absolute and capricious right to withhold funding after it had approved a Reservation and issued an applicant eligibility letter to the Owner-Builder applicant to participate in the Texas Bootstrap Loan Program.

STAFF RESPONSE: Staff concurred and recommended the following revision:

§2.8(c)(5) Prior to issuing an applicant eligibility letter the Department may decline to fund any Reservation entered into the Reservation system if the proposed housing activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Reservation which are entered, and may decide it is in the Department's best interest to refrain from committing the funds. If the Department has issued an applicant eligibility letter to the Owner-Builder applicant, but the NOHP and/or Owner-Builder applicant has not complied with all the Program rules and guidelines, the Department may suspend funding until the NOHP and/or Owner-Builder applicant has satisfied all requirements of the Program. If the NOHP is unable to cure any deficiencies within fifteen (15) days, the Department may provide a one-time fifteen (15) day extension or decline to fund the Reservation.

§2.8(c)(6). Criteria for Funding.

COMMENT (57): The commenter stated a concern about the Reservation system inability to emphasize extremely low-income families with incomes below $17,500. A tiebreaker benefiting

only one family at the end when funds are running out does not out weight a NOFA system of awarding of points to applications primarily benefiting families below $17,500.

It was also recommended the Department review and make available data on the incomes of families served by Bootstrap before and after the institution of the Reservation system and that the Department provide for, within these rules, the ability to adjust the operation of the Reservation system to assure that families with incomes below $17,500 substantially benefit from the Bootstrap Program and whether a local government imposes development fees or waives fees has no bearing on the degree of housing need experienced by a family.

STAFF RESPONSE: Staff did not recommend any amendments. The Reservation system is a "ready to proceed" model which has resulted in a more efficient process for distributing and expending funds. Under §2306.753 of the Texas Government Code the Department is required to establish a priority for loans made under this Program to Owner-Builders whose income is less than $17,500. Over 270 loans have been made to households with incomes at or below $17,500 since the inception of the Program in fiscal year 2000. This number represents approximately 31% of all loans made under the Program. Since the inception of the Reservation system in fiscal years 2008 and 2009 a total of 96 loans (approximately 35%) have been made to household with incomes at or below $17,500. Staff reviews all loan applications submitted daily to ensure that priority is given to households with incomes at or below $17,500. Under §2306.757 of the Texas Government Code, the Department is also required to give priority on loans to Owner-Builders who will reside in counties or municipalities that agree in writing to waive capital recovery fees, building permit fees, inspection fees, or other fees. NOHP is required to notify the Department and submit the necessary documentation provided by the local government entity listing all fees that have been waived. Both of these items are addressed in §2.8(c)(6) of the Program rules.

§2.9(a). Program Administration.

COMMENT (52,53, 57): The commenters requested clarification whether Bootstrap could be combined with Department funds such as HOME, Housing Trust Funds, First-time Homebuyer Bond funds, etc. Some legislative action was taken to address the Department's current policy regarding leveraging other Department funds in conjunction with the Bootstrap Loan Program. One commenter stated Owner-Builder applicants in participating jurisdictions have an unfair advantage over Owner-Builder applicants in non-participating jurisdiction. Owner-Builder applicants in participating jurisdictions are able to leverage HOME funds with the Bootstrap Loan Program. While Owner-Builder applicants in non-participating jurisdictions are not able to leverage HOME funds and in most cases these Owner-Builder applicants are faced with higher construction and land acquisition costs.

STAFF RESPONSE: The Department determined the Texas Bootstrap Loan Program is able to originate mortgage loans from housing trust fund, federal block grants and Owner-Builder revolving loan fund which can receive funds from the HOME Investment Partnership Program in accordance with §2306.7581 of the Texas Government Code. The Department also determined that other Department funds, with the exception of funds being utilized to implement the Texas Bootstrap Loan Program, may be leveraged with the Texas Bootstrap Loan Program funds for amounts needed above $45,000 not to exceed $90,000 in total amount of amortized repayable loans. Staff recommended the following revision:

§2.9(a) Per household assistance from the Department for any Texas Bootstrap Loan Program loans may not exceed $45,000 per-household pursuant to §2306.754(b) of the Texas Government Code. The Owner-Builder must obtain the amount necessary that exceeds $45,000 from other sources of funds including other Department funds with the exception of funds being utilized to implement the Texas Bootstrap Loan. The total amount of Amortized repayable loans made by the Department and other entities to an Owner-Builder under the Program may not exceed $90,000 pursuant to §2306.754(b) of the Texas Government Code. For purposes of these rules, a Grant includes a forgivable loan.

§2.9(t)(4). Program Administration.

COMMENT (57): The commenter stated the USDA 502 mortgage term is 33 years. The Bootstrap Program must allow for combination with USDA mortgages.

STAFF RESPONSE: Staff did not recommend amendments. Texas Government Code §2306.754(c) states that a loan made by the Department may not exceed a term of thirty (30) years.

§2.9(t)(9). Program Administration.

COMMENT (57): The commenter stated the Department should provide for waiving the debt-to-income ceiling in cases where it is appropriate to do so. Such as allowing a higher ceiling for a person with disabilities who has a steady income, low living expenses and a strong history of paying debts.

STAFF RESPONSE: Staff did not recommend amendments. The 45% debt-to-income ratio requirement already exceeds most lending requirements set by the mortgage industry. Currently under FHA manual underwriting their qualifying ratio requirement is 31%/43%, under Fannie Mae their qualifying ratio requirement is 38%, USDA Rural Housing Loan Program qualifying ratio is 29%/41%.

§2.9(t)(10). Loan Program Requirements--Credit Qualifications.

COMMENT (51): The commenter stated that it is not cost effective for the NOHP to collect from the potential Owner-Builder the fee for two tri-merge credit reports that will be submitted to all the lenders.

STAFF RESPONSE: Staff did not recommend amendments. Currently the majority of credit reports submitted by the NOHP on behalf of an Owner-Builder applicant do not contain a tri-merge credit report the Department at its expense will order and obtain the tri-merge credit report.

§2.9(t)(11) - (13). Program Administration.

COMMENT (51, 52, 54, 55, 57): Commenters stated that the proposed credit standards would make it impossible to continue qualifying families under the Program. They also stated proposed rules go against the purpose of the Bootstrap Program, which was to help families to obtain the funds to build an affordable decent home. In today's economy, that purpose stands even more clearly. Rather than instituting standards, which will penalize hundreds of families, it was recommended a meeting of Bootstrap providers be established to review performance data. It was also recommended allowing a loan where the applicant pays the collection in full. FHA allows the applicant to pay the collection and no waiting is required.

STAFF RESPONSE: Staff concurred and recommended the following revisions:

§2.9(t)(11)(A) Payments on any consumer, retail and/or installment account (i.e. auto loans, signature loans, payday loans, credit cards or any other type of retail and/or installment loan) which has been delinquent for more than thirty (30) days on three (3) or more occasions within the last twelve (12) months, unless the Owner-Builder applicant has been current for the four (4) months immediately preceding the application date and must submit to the Department a written explanation of the cause for the previous delinquency, which is acceptable to the Department. For purposes of this subparagraph, the credit history of an Owner-Builder who is a domestic farm laborer and receives a substantial portion of his/her income as a laborer on a farm will not apply. However, Owner-Builder must still demonstrate the ability and willingness to meet debt obligations.

§2.9(t)(11)(E) Any account (with the exception of a medical account) that has been placed for "collection," "profit and loss" or "charged off" within the last twelve (12) months prior to the date of application, unless the account has been paid in full.

§2.9(t)(14). Program Administration.

COMMENT (57): The commenter stated that as Texas cities emphasized smaller lot sizes and denser development, such as town houses, condominiums or other attached housing configuration. The Bootstrap rules should not preclude such a possibility.

STAFF RESPONSE: The Department does not impose any density restrictions, which would prohibit participating in the Program. The 65% sweat equity requirement under the Program will be difficult to achieve and document on attached single-family residences except in the case of rehabilitation. Staff recommended the following amendment:

§2.9(t)(14) Must be a detached single-family residence or property located within the State of Texas; attached single-family residence may qualify under the Program for a rehabilitation loan. Manufactured homes are not eligible. All property taxes must be current prior to closing.

§2.9(t)(17). Program Administration--Loan Program Requirements--Non-Purchasing Spouse.

COMMENT (52): The commenter recommended not including the debts of the non-purchasing spouse in the debt-to-income ratio since they will not be financially responsible for the loan.

STAFF RESPONSE: Staff did not recommend amendments. It is crucial when reviewing the loan for approval that the total household income and debts be taken into consideration. This Program is intended to serve very low income families and to ensure the families will be successful homeowners.

§2.12. Property Guidelines.

COMMENT (56): The commenter stated that the number of inspections that are required for all housing rehabilitation, reconstruction, and new home construction is not adequate. The Department should provide guidance with regard to which party will be responsible for the inspection fees.

STAFF RESPONSE: Housing being rehabilitated and/or constructed within an incorporated area are being inspected by the local government entity. For housing being rehabilitated and/or constructed outside an incorporated area, the Department currently requires a final inspection to be completed by a licensed third party inspector. Under the proposed rules the Department is requiring an initial and final inspection for all housing being rehabilitated outside an incorporated area. Staff recommended the following revision:

§2.12(b) If the property is located within an incorporated area where certain building codes must be met, the Department will require a copy of the certificate of occupancy. If no certificate of occupancy is available from an incorporated area the NOHP must obtain a document from the local government entity showing that the home has passed all required building codes. A copy of the certificate of occupancy or any other document received from the local governing entity must be submitted to the Department upon completion of construction. If the property is located outside an incorporated area inspections will be required to be completed by a professional inspector licensed by the Texas Real Estate Commission. For all housing rehabilitation projects an initial and final inspection will be required. An initial inspection will be required for all reconstruction projects to determine that it is not cost effective for rehabilitation and therefore needs to be reconstructed. If the property is located in an incorporated area a certificate of occupancy will be required for all completed reconstruction and new construction projects. If the property is located outside an incorporated area a final inspection will be required for reconstruction and new construction projects.

(1) The initial inspection for rehabilitation must identify and prioritize areas in need of repair. A copy of the initial inspection reports must be provided to the Department and the homeowner.

(2) The final inspections for housing rehabilitation must ensure that the construction on the house is complete, that the home is safe, sound and sanitary. A copy of the final inspection report must be provided to the Department and the homeowner.

(3) The final inspections for reconstruction and new construction must ensure that the construction on the home is complete, that the home is safe, and that it meets, at a minimum, International Residential Code (IRC). IRC is a comprehensive residential code which establishes minimum construction requirements with plumbing, mechanical, energy, and electrical provisions. A copy of the final inspection report must be provided to the Department and the homeowner.

(4) The Contractor must ensure and verify that each construction contractor performing activities in the amount of $10,000.00 or more under the Contract is registered and maintains good standing with the Texas Residential Construction Commission.

(5) The Contractor must ensure and verify that each housing unit being rehabilitated in the amount of $10,000.00 or more under the Contract is registered with the Texas Residential Construction Commission.

(6) All final inspections must ensure that the construction on the house is complete and that the home is safe. In both instances any deficiencies noted on the certificate of occupancy or the third party inspector's report must be corrected prior to closing. Cosmetic issues such as paint, wall texture, etc. will not be required to be corrected since this is a self-help construction Program. If the Texas Residential Construction Commission registrations required in this chapter are no longer required by operation of law, such registrations must be obtained from the entity that succeeds to the applicable registration functions of the Texas Residential Construction Commission, if any.

(7) The NOHP and/or the Owner-Builder applicant will be responsible for the selection and/or the fee of a licensed inspector.

The Board approved the final order adopting the new sections, as amended, as well as administrative changes as needed for consistency within this chapter, on October 15, 2009.

The new sections are adopted pursuant to the authority of the Texas Government Code, Chapter 2306 which provide the Department the authority to adopt rules governing the administration of the Department and its programs.

§2.1. Purpose.

(a) This chapter clarifies the administration of the Texas Department of Housing and Community Affairs Texas Bootstrap Loan Program also known as the Owner-Builder Loan Program. The Texas Bootstrap Loan Program provides assistance to income-eligible individuals, families and households to purchase or refinance real property, on which to build new residential housing or improve existing residential housing. The Program is administered in accordance with Chapter 2306, Subchapter FF of the Texas Government Code.

(b) The Texas Bootstrap Loan Program is a self-help construction Program that is designed to provide very low-income families an opportunity to help themselves attain homeownership or repair their existing homes through sweat equity. All Owner-Builder applicants under this Program are required to provide through personal labor at least 65% of labor necessary to build or rehabilitate the home. All applicable building codes and housing standards are adhered to under this Program. In addition, nonprofit organizations can combine these funds with other sources of funds. The total amount of Amortized repayable loans made by the Department and other entities to an Owner-Builder may not exceed $90,000 per housing unit.

§2.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Activity--A form of assistance by which Texas Bootstrap Loan Program funds are used to provide incentives to develop and support affordable housing and homeownership through acquisition, new construction, reconstruction, and rehabilitation of residential housing.

(2) Administrative Deficiencies--The absence of information or a document from the Owner-Builder application as required by these rules and Program Manual.

(3) Amortized--A loan in which the principal as well as the interest, if applicable, is payable monthly or in some other periodic installment over the term of the loan.

(4) Board--The governing board of the Texas Department of Housing and Community Affairs.

(5) Colonia--A geographic area located in a county some part of which is within one-hundred fifty (150) miles of the international border of this state that:

(A) has a majority population composed of individuals and families of low income and very low income, based on the federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed area under §17.921, Texas Water Code; or

(B) has the physical and economic characteristics of a Colonia, as determined by the Department.

(6) Colonia Self-Help Center--As defined under Chapter 2306, Subchapter Z of the Texas Government Code.

(7) Committed--Funds reserved for an Owner-Builder and approved by the Department.

(8) Department--The Texas Department of Housing and Community Affairs.

(9) Development--Projects that have a construction component, either in the form of new construction or the rehabilitation of single family residential housing that meet the Texas Bootstrap Loan Program requirements.

(10) Drawn--Funds approved by the Department and disbursed to the Nonprofit Owner-Builder Housing Provider (NOHP).

(11) Economically Distressed Area--A county that contains an area that meets the criteria for an economically distressed area under §17.92(1), Texas Water Code; and has adopted and enforces the model rules under §16.343, Texas Water Code.

(12) Grant--Financial assistance that is awarded in the form of money to a housing sponsor for a specific purpose and that is not required to be repaid. A Grant includes a forgivable loan.

(13) HUD--United States Department of Housing and Urban Development.

(14) Life of Loan Flood Certification--Life of Loan Flood Certification tracks the flood zone of the property for the life of the loan.

(15) Loan Origination Agreement--A written agreement, including all amendments thereto between the Department and the Nonprofit Owner-Builder Housing Provider (NOHP), that authorizes the NOHP to originate certain loans under the Texas Bootstrap Loan Program.

(16) New Construction--Any single-family structure not meeting the definition of Rehabilitation or Reconstruction.

(17) NOFA--Notice of Funding Availability.

(18) NOHP--Nonprofit Owner-Builder Housing Provider.

(19) Nonprofit Organization--An organization that:

(A) is organized under state or local laws;

(B) has no part of its net earnings benefiting any member, founder, contributor, or individual;

(C) has a current tax exemption ruling from the Internal Revenue Service (IRS) under §501(c)(3), a charitable, nonprofit corporation, of the Internal Revenue Code of 1986, as evidenced by a certificate from the IRS that is dated 1986 or later. The exemption ruling must be effective on the date of the Application and must continue to be effective throughout the length of any contract agreements; or classification as a subordinate of a central organization nonprofit under §501(c)(3) of the Internal Revenue Code, as evidenced by a current group exemption letter, that is dated 1986 or later, from the IRS that includes the Applicant. The group exemption letter must specifically list the Applicant; and

(D) has a pending application for §501(c)(3) status cannot be used to comply with the tax status requirement.

(20) Open Reservation Cycle--A defined period during which an NOHP may submit Owner-Builder applications according to a published NOFA and which will be reviewed on a first come-first serve basis until all funds available are committed, or until the NOFA is closed. Owner-Builder applications will be reviewed in accordance with Program rules and the Program Manual. The Department may release funds in a two (2) year funding cycle or less than two (2) years.

(21) Owner-Builder--A person, other than a person who owns or operates a construction business and who owns or purchases a piece of real property through a warranty deed and deed of trust; or

is purchasing a piece of real property under a contract for deed entered into before January 1, 1999; and who undertakes to make improvements to that property.

(22) Participant--An organization which submits an application to the Department to be certified as an NOHP.

(23) Program--Texas Bootstrap Loan Program also know as the Owner-Builder Loan Program.

(24) Program Manual--A set of guidelines designed to be an implementation tool for the NOHP that has executed a Loan Origination Agreement and allows the NOHP to search for terms, statutes, regulations, forms and attachments. The Program Manual is developed by the Department and amended or supplemented from time-to-time.

(25) Reconstruction--The rebuilding of a new single-family structure on the same lot where housing exists at the time of Owner-Builder loan application. Texas Bootstrap Loan Program funds may also be used to build a new foundation or repair an existing foundation.

(26) Rehabilitation--Includes the alteration, improvement or modification of an existing single family structure. It may also include moving an existing single family structure to a foundation constructed with Texas Bootstrap Loan Program funds.

(27) Related Party--As defined in §2306.6702 of the Texas Government Code.

(28) Reservation--An amount of funds set-aside for each individual Owner-Builder applicant registered into the Department's Texas Bootstrap Loan Program Registration website.

(29) Self-Help Housing Construction--The self-help housing process enables Owner-Builders to rehabilitate, reconstruct or construct their own homes, usually working together in groups on other eligible Owner-Builder's houses at the same time. Owner-Builders use their own "sweat equity" to reduce the cost of their homes.

(30) Single family structure--A property designed and built to support the habitation of one person or one household.

(31) Very Low-Income Families--Owner-Builders who do not have an annual income that exceeds 60% of the greater of the state or local median family income, as determined by the Department, when combined with the income of any person who resides with the Owner-Builder.

§2.3. Allocation of Funds.

(a) The Department administers all Texas Bootstrap Loan Program funds provided to the Department in accordance with Chapter 2306, Subchapter FF of the Texas Government Code. The Department shall solicit gifts and grants to make loans under this chapter.

(b) The Department may also make loans under this chapter from:

(1) available funds in the housing trust fund established under §2306.201 of the Texas Government Code;

(2) federal block grants that may be used for the purposes of this chapter; and

(3) the Owner-Builder revolving loan fund established under §2306.7581 of the Texas Government Code.

(c) The Department shall establish an Owner-Builder revolving loan fund for the sole purpose of funding loans pursuant to §2306.7581 of the Texas Government Code.

(d) The Department shall deposit money received in repayment of a loan to the Owner-Builder revolving loan fund pursuant to §2306.7581 of the Texas Government Code.

(e) Each state fiscal year the Department shall transfer at least $3 million to the Texas Bootstrap Loan Program revolving fund from money received under the federal HOME Investment Partnerships program established under Title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12701, et seq.), from money in the housing trust fund; or from money appropriated by the legislature to the Department pursuant to §2306.7581 of the Texas Government Code.

(f) In a state fiscal year the Department may use not more than 10% of the revenue available to enhance the ability of tax-exempt organizations described by §2306.755(a) of the Texas Government Code to enhance the number of such organizations that are able to implement the Program. The Department shall use that available revenue to provide financial assistance, technical training and management support.

§2.4. Participant Requirements.

(a) Eligible Participants. The following organizations or entities are eligible to participate in the Texas Bootstrap Loan Program:

(1) Colonia Self Help Centers established under Chapter 2306, Subchapter Z of the Texas Government Code; or

(2) Nonprofit Owner-Builder Housing Provider (NOHP) certified by the Department pursuant to §2306.755 of the Texas Government Code.

(b) Ineligible Participants. The following violations may cause a Participant, and any applications they have submitted, to be ineligible:

(1) Previously funded Participant(s) who have been partially or fully deobligated due to failure to meet contractual obligations during twelve (12) month period prior to the NOFA published date;

(2) Participants who have not satisfied all eligibility requirements described in the Program rules and NOFA to which they are responding;

(3) Participants that have failed to make timely payment on fee commitments or on debt instruments held by the Department and for which the Department has initiated formal collection actions;

(4) Participants that have been debarred by HUD or the Department; or

(5) Participants whose staff violates the state's revolving door policy.

(c) Noncompliance. Each Participant will be reviewed for its compliance history by the Department. Participants found to be in material noncompliance, or otherwise violating the compliance rules of the Department, will be terminated.

(d) Eligibility requirements. Participant must be certified as an NOHP or must be a Colonia Self-Help Center and must have entered into a Loan Origination Agreement with the Department in order to be eligible to participate in the Texas Bootstrap Loan Program Reservation system and as more fully described in the NOFA. The Participant must have the capacity to administer and manage resources as evidence by previous experience of managing state and/or federal programs.

(e) If indicated by the Department, comply with all requirements to utilize the Department's website to provide necessary data to the Department.

§2.5. Program Activities.

All eligible Participants that satisfy the requirements of §2.4 of this chapter (relating to Participant Requirements) may reserve funds and submit a loan application on behalf of an Owner-Builder applicant for the Texas Bootstrap Loan Program.

§2.6. Prohibited Activities.

The following activities are prohibited in relation to the origination of a Texas Bootstrap Loan Program loan, but may be charged as an allowable cost by a third (3rd) party lender for the origination of all other loans originated in connection with a Texas Bootstrap Loan Program loan:

(1) Payment of delinquent property taxes or related fees or charges on properties to be assisted with Texas Bootstrap Loan Program funds;

(2) Loan Origination Fees;

(3) Application fee;

(4) Discount fees;

(5) Underwriter fee;

(6) Loan Processing fees; and

(7) Other fees not approved by the Department.

§2.7. Distribution of Funds.

(a) Set-Asides. In accordance with §2306.753(d) of the Texas Government Code, at least two-thirds (2/3) of the dollar amount of loans made under this chapter in each fiscal year must be made to Owner-Builders whose property is located in a county that is eligible to receive financial assistance under Chapter 17, Subchapter K of the Texas Water Code.

(b) Balance of State. The remaining one-third (1/3) of the dollar amount of loans may be made to Owner-Builders in either a county under subsection (a) of this section or a county not eligible to receive financial assistance under Chapter 17, Subchapter K of the Texas Water Code.

(c) Reservation procedures. Reservations of funds are available to the Nonprofit Owner-Builder Housing Provider (NOHP) on first-come, first-served basis. In all cases the NOHP must register each Owner-Builder applicant on the Texas Bootstrap Loan Program Reservation system via the Department's website. Maximum Reservations allowed for an NOHP at any given time may not exceed $900,000 in total loan Reservations in the two-thirds set-aside as noted in §2306.753(d) of the Texas Government Code. The NOHP may not exceed $450,000 in total loan Reservations at any given time under the Balance of the State set-aside. The NOHP may enter additional Reservations after a loan has closed and all required closing documents have been submitted to the Department for funding.

(d) A Reservation of funds with respect to the Program may be subject to cancellation if all documents required in the Program Manual are not submitted to the Department within ten (10) business days of the date the registration was entered into the Reservation system and/or if the performance benchmarks outlined in these Program rules are not adhered to. Registration of an Owner-Builder applicant does not guarantee funding.

(e) Modification of Loan Reservation. After a Reservation has been secured and the Owner-Builder applicant has been deemed eligible to participate in the Program, the NOHP must notify the Department of any changes to the Owner-Builder application, such as a cancellation, change in the sales price, or change in the loan amount. The NOHP will not be permitted to change, exchange, replace or switch Owner-Builder applicants once the loan has been registered; unless construction has commenced and one of the following events has occurred: death, illness, divorce, loss of income, nonperformance by Owner-Builder applicant or for other acceptable reasons, as approved by the Department, where the Owner-Builder applicant is unable to perform.

(f) Once a Reservation has been awarded, the Department may grant one forty-five (45) day extension of required benchmarks due to extenuating circumstances that were beyond the Owner-Builder's and/or the NOHPs control. If the NOHP cannot meet the required benchmarks after the forty-five (45) day extension, the Reservation will be cancelled. In order to receive another Reservation on the same Owner-Builder applicant the NOHP must submit an updated application to ensure the Owner-Builder applicant still meets all guidelines and requirements under Texas Bootstrap Loan Program rules and Program Manual.

§2.8. Criteria for Funding.

(a) All Notices of Funding Availability (NOFA) will be presented to the Board for approval. The Department will publish a NOFA in the *Texas Register* and on the Department's website. The NOFA will be published as an Open Reservation Cycle. The NOFA will establish and define the terms and conditions for the submission of Reservations. The NOFA will also indicate the approximate amount of available funds.

(b) A nonprofit organization must have been certified by the Department as a Nonprofit Owner-Builder Housing Provider (NOHP) and must have executed a Loan Origination Agreement to be eligible to submit a Reservation on behalf of an Owner-Builder applicant. A Reservation containing false information and/or all documents required in the Program Manual are not received within ten (10) business days after the Reservation has been entered into the system will be disqualified. The Department staff will review and process all Owner-Builder applications in the order received. If the Department receives more than one Owner-Builder application on the same day the applications will be processed in the order entered into the Reservation system. The NOHP will be notified in writing of the Department's determination.

(c) Reservations received by the Department in response to a NOFA will be handled in the following manner:

(1) The Department will accept Reservations until the all funds under the NOFA have been committed. The Department may limit the eligibility of Reservations in the NOFA.

(2) Each Reservation will be assigned a "received date" based on the date and time the Reservation was entered into the Texas Bootstrap Loan Program Reservation system. Each Reservation will be reviewed in accordance with the Program rules.

(3) Reservations and/or applications submitted on behalf of an Owner-Builder applicant must comply with all applicable Texas Bootstrap Loan Program requirements or regulations established in these rules. Reservations and/or applications submitted on behalf of an Owner-Builder applicant that do not comply with such requirements will be disqualified. The NOHP will be notified in writing of any cancelled and/or disqualified Reservations and/or applications submitted on behalf of an Owner-Builder applicant.

(4) Administrative Deficiencies. If a Reservation contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Reservation, the Department staff may request clarification or correction of such Administrative Deficiencies. The Department staff may request clarification or correction in a deficiency notice in the form of an email, facsimile or a telephone call to the NOHP advising that such a request has been transmitted. An NOHP may not change or supplement a Reservation in any manner after submission, except in response to a direct request from the Department. The NOHP must submit the requested information to the Department within five (5) business days of notification of deficiency.

(5) Prior to issuing an applicant eligibility letter the Department may decline to fund any Reservation entered into the Reservation system if the proposed housing activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Reservation which are entered, and may decide it is in the Department's best interest to refrain from committing the funds. If the Department has issued an applicant eligibility letter to the Owner-Builder applicant, but the NOHP and/or Owner-Builder applicant has not complied with all the Program rules and guidelines, the Department may suspend funding until the NOHP and/or Owner-Builder applicant has satisfied all requirements of the Program. If the NOHP is unable to cure any deficiencies within fifteen (15) days, the Department may provide a one-time fifteen (15) day extension or decline to fund the Reservation.

(6) In the event of a tie between two or more Reservations, the Department reserves the right to determine which Reservation will receive funding. The Department will give priority to Reservations to Owner-Builders with an annual income of less than $17,500 and Reservations to Owner-Builders who will reside in counties and municipalities that agree in writing to waive the capital recovery fees, building permit fee or other fees related to the building of the houses to be built with the loan proceeds. Tied Reservations may also receive a partial recommendation for funding.

(d) Alternative Dispute Resolution Policy. In accordance with §2306.082 of the Texas Government Code, it is the Department's policy to encourage the use of appropriate alternative dispute resolution (ADR) procedures under the Governmental Dispute Resolution Act, Chapter 2009 of the Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR procedure at §1.17 of this title (relating to Alternative Dispute Resolution and Negotiated Rulemaking).

§2.9. Program Administration.

(a) Per household assistance from the Department for any Texas Bootstrap Loan Program loans may not exceed $45,000 per-household pursuant to §2306.754(b) of the Texas Government Code. The Owner-Builder must obtain the amount necessary that exceeds $45,000 from other sources of funds including other Department funds with the exception of funds being utilized to implement the Texas Bootstrap Loan Program. The total amount of Amortized repayable loans made by the Department and other entities to an Owner-Builder under the Program may not exceed $90,000 pursuant to §2306.754(b) of the Texas Government Code. For purposes of this chapter, a Grant includes a forgivable loan.

(b) A loan made by the Department shall be secured by a first (1st) lien on the real property if the Department's loan is the largest Amortized, repayable loan secured by the real property; or

(c) The Department may accept a parity lien position if the original principal amount of the leveraged loan is equal to or greater than the Department's loan; or

(d) The Department may accept a subordinate lien position if the original principal amount of the leveraged loan is at least $1,000 or greater than the Department's loan. However liens related to other subsidized funds provided in the form of grants and nonamortizing loans, such as deferred payment or forgivable loans, must be subordinate to the Department's loan.

(e) The Department, through a Nonprofit Owner-Builder Housing Provider (NOHP), shall make loans for Owner-Builder applicants to enable them to:

(1) purchase or refinance real property on which to build new residential housing;

(2) build new residential housing; or

(3) improve existing residential housing.

(f) The NOHP will be granted a 6% administration fee upon completion of the house and closing of each mortgage loan.

(g) Loan Origination Agreement. Upon approval by the Department, the nonprofit organization certified as an NOHP or Colonia Self-Help Centers shall enter into, execute, and deliver to the Department the Loan Origination Agreement.

(h) Amendments. The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver modifications and/or amendments to any Program written agreement provided that:

(1) Time extensions. The Executive Director may collectively provide up to one six (6) month extension to the end date of any Loan Origination Agreement. Any additional time extension granted by the Executive Director shall include a statement by the Executive Director relating to unusual, non-foreseeable or extenuating circumstances. If the extension is longer than six (6) months and the Executive Director determines that a statement related to unusual, non-foreseeable, or extenuating circumstances cannot be issued, it will be presented to the Governing Board for approval, approval with modifications, or denial of the requested extension; and

(2) In the case of all other modifications or amendments, such modification or amendment does not, in the estimation of the Executive Director, significantly decrease the benefits to be received by the Department.

(i) Sanctions/Deobligation. The Department will apply its Administration Rules in Chapter 1 of this title.

(j) The Department may use all applicable provisions and/or any relevant rules to assure compliance with these rules or Loan Origination Agreement.

(k) Additional Funds. In the event the Department has additional funds in the same funding cycle, the Department, with Board approval, will distribute funds in accordance with §2.7(a) - (b) of this chapter (relating to Distribution of Funds).

(l) The Department may terminate the Loan Origination Agreement in whole or in part. If the NOHP has not achieved performance benchmarks as outlined in Loan Origination Agreement, Program rules and Manual. Performance benchmarks must be satisfactorily completed as follows:

(1) If the Owner-Builder applicant qualifies for the Program, the Department will issue an applicant eligibility letter (approval letter) which reserves the funds (up to $45,000 per Reservation) for twelve (12) months from the Reservation date. Owner-Builder applicant will not be required to re-qualify for the Program if the Owner-Builder applicant closes on the loan on or before the expiration date stated on the applicant eligibility letter issued by the Department. If the Owner-Builder fails to close on the loan on or before the expiration date stated on the applicant eligibility letter, the Owner-Builder applicant will be required to re-qualify for the Program. In an effort to

expedite expenditure of funds, the NOHP will be required to meet specific performance benchmarks on the home within twelve (12) months of the Reservation. If the NOHP fails to meet the required benchmarks, the Reservation may be subject to cancellation in accordance with the Loan Origination Agreement. The Department may provide one forty-five (45) day extension to benchmark deadlines due to extenuating circumstances that were beyond the Owner-Builder's and/or the NOHPs control. If the NOHP cannot meet the required benchmarks after the forty-five (45) day extension, the Reservation will be cancelled. In order to receive another Reservation on the same Owner-Builder applicant the NOHP will be instructed to submit an updated application if funds are available, to ensure the Owner-Builder applicant meets all Texas Bootstrap Loan Program rules. Once an Owner-Builder has been deemed eligible and funds have been reserved, the NOHP must meet the following performance benchmarks depending on the type of loan being requested:

(A) Purchase Money Loan:

(i) Within ninety (90) days of the respective Reservation date the NOHP must have initiated the preconstruction process, which includes the homeownership education and counseling programs of the organization;

(ii) Within one-hundred-eighty (180) days of the respective Reservation date construction must have started on the unit; and

(iii) Within one (1) year of the respective Reservation date the unit must be 100% complete and the purchase money loan must have closed with the Owner-Builder applicant.

(B) Interim and Residential Construction Loans:

(i) Within ninety (90) days of the respective Reservation date, the loan must close and construction must have started on the unit;

(ii) Within one-hundred-eighty (180) days of the respective Reservation date, the unit must be at 40% completion;

(iii) Within two-hundred-seventy (270) days of the respective Reservation date, the unit must be at 80% completion; and

(iv) Within one (1) year of the respective Reservation date, the unit must be 100% complete and the purchase money loan must have closed with the Owner-Builder applicant.

(2) Quarterly reports are due by the NOHP to the Department on the 20th of the month following the end of each calendar quarter. All funding may be suspended until reports are received.

(m) Roles and responsibilities for administering the Program contract. NOHPs are required to:

(1) Qualify potential Owner-Builders for loans;

(2) Provide Owner-Builder homeownership education classes;

(3) Supervise and assist Owner-Builders in building and/or rehabilitate housing;

(4) Facilitate loans made or purchased by the Department under the Program; and

(5) Implement and administer the Program on behalf of the Department.

(n) Loan Origination/Loan Servicing. An NOHP must enter into a Loan Origination Agreement with the Department in order to participate in the Program. If the NOHP wishes to service the loans originated on behalf of the Department it must enter into a Loan Servicing Agreement with the Department. The Department may grant the request upon reviewing the NOHP capacity to implement those specific functions.

(o) First Year Consultation Agreement. The NOHP agrees that if notified by the Department that Owner-Builder has failed to make a scheduled payment due under the Program loan, or other payments due under the Program loan documents issued under the Program, within the first twelve (12) months of funding, the NOHP will be required to meet with the Owner-Builder and provide counseling and assistance until the payments are made current. After consultation and in the event that the Department and NOHP are not able to reach a consensus about NOHPs effort to bring the Program loan current as required under this chapter, the Department in accordance with its administrative rules may apply appropriate graduated sanctions leading up to, but not limited to deobligation of funds and future debarment from participation in the Program.

(p) Conflict of Interest. The NOHP shall ensure that no employee, officer, or agent of NOHP shall participate in the selection, or in the award or administration of a subcontract supported by funds provided under this Program if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when the employee, officer, or agent; any member of his or her immediate family; his or her partner; or, any organization which employs, or is about to employ any of the above; has a financial or other interest in the firm or person selected to perform the subcontract. The NOHP may not accept an application from any of its officers or employees nor any spouse or person related within the third (3rd) degree of affinity (marriage) or consanguinity (blood) to any officer or employee of the NOHP.

(q) Administrative Fee. The NOHP may request their administrative fee upon completion of the house and closing of each mortgage loan.

(r) Blueprints. If NOHPs activity is interim or residential construction, NOHP must provide an original copy of the proposed blueprints to be approved by the Department prior to accepting applications. Blueprints must include the required construction requirements pursuant to §2306.514 of the Texas Government Code.

(s) Work Write-up. The NOHP must submit a work write-up for all rehabilitation projects. At a minimum, NOHP must ensure that the home will meet Colonia Housing Standard or Housing Quality Standards. Work write-ups must be reviewed and approved by the Department, before rehabilitation is started. The NOHP must also adopt a set of general specifications that provide detailed guidance to Owner-Builders and contractors on how to complete specific items in a work write-up.

(t) Loan Program requirements. The Department may purchase or originate loans that conform to the lending parameters and the specific loan Program requirements as follows:

(1) Maximum Loan amount not to exceed $45,000. If it is not possible for the Owner-Builder to purchase necessary real property and build adequate housing for $45,000, the NOHP must obtain additional funding from other sources of funds.

(2) Minimum Loan amount is $1,000.

(3) The total amount of all Amortized repayable loans under the Program may not exceed $90,000. Deferred forgivable loans are not included in these total loan calculations.

(4) May not exceed a term of thirty (30) years.

(5) Minimum loan term of five (5) years.

(6) Zero percent (0%) non-interest loans.

(7) When refinancing a contract for deed, the Department will not disburse any portion of the Department's loan until the Owner-Builder receives a deed to the property.

(8) Owner-Builder(s) must have resided in this state for the preceding six (6) months prior to the date of application.

(9) Total Debt-to-Income Ratio. Maximum of 45% (unless otherwise dictated by the mortgage insurer, if any).

(10) Credit Qualifications. Owner-Builder applicants must have a credit history that indicates reasonable ability and willingness to meet debt obligations. In order for the Department to make a reasonable determination, the Department will obtain a tri-merge credit report on all Owner-Builder applicants submitted to the Department for approval.

(11) Indicators of unacceptable credit include:

(A) Payments on any consumer, retail and/or installment account (i.e. auto loans, signature loans, payday loans, credit cards or any other type of retail and/or installment loan) which has been delinquent for more than thirty (30) days on three (3) or more occasions within the last twelve (12) months, unless the Owner-Builder applicant has been current for the four (4) months immediately preceding the application date and must submit to the Department a written explanation of the cause for the previous delinquency, which is acceptable to the Department. For purposes of this subparagraph, the credit history of an Owner-Builder who is a domestic farm laborer and receives a substantial portion of his/her income as a laborer on a farm will not apply. However, Owner-Builder must still demonstrate the ability and willingness to meet debt obligations.

(B) A foreclosure which has been completed within the last twelve (12) months prior to the date of application.

(C) An outstanding Internal Revenue Service tax lien or any other outstanding tax liens where Owner-Builder applicant has made no satisfactory payment arrangements.

(D) A court-created or court-affirmed obligation or judgment caused by nonpayment that is currently outstanding or has been outstanding within the last twelve (12) months and Owner-Builder applicant has made no satisfactory payment arrangements.

(E) Any account (with the exception of a medical account) that has been placed for "collection," "profit and loss" or "charged off" within the last twelve (12) months prior to the date of application, unless the account has been paid in full.

(F) Any delinquency on any government debt.

(G) A bankruptcy that has been filed within the past twelve (12) months prior to the date of application.

(12) The following will not be considered indicators of unacceptable credit:

(A) A bankruptcy in which debts were discharged more than twenty-four (24) months prior to the date of application or where an applicant successfully completed a bankruptcy debt restructuring plan and has demonstrated a willingness to meet obligations when due for the twelve (12) months prior to the date of application.

(B) A judgment satisfied more than twelve (12) months before the date of application.

(C) Medical accounts that are delinquent or that have been placed for collection.

(13) Liabilities. The Owner-Builder applicant's liabilities include all revolving charge accounts, real estate loans, alimony, child support, installment loans, and all other debts of a continuing nature with more than ten (10) monthly payments remaining. Debts for which the Owner-Builder applicant is a co-signer will be included in the total monthly obligations unless the other party to the debt provides evidence showing that the Owner-Builder applicant has not been making payments on the co-signed loans for the previous twelve (12) months. There may be no late payments within the past twelve (12) months or the debt will be included. Payments on installment debts which are paid off prior to funding are not included for qualification purposes. Payments on all revolving debts (i.e. credit cards, payday loans, lines of credit, unsecured loans) and certain types of installment loans that appear to be recurring in nature will be included in debt ratio calculation, even if the Owner-Builder applicant intends to pay off the accounts, since the Owner-Builder applicant can reuse those credit sources, unless the account is paid off and closed. Any bankruptcy must have been discharged or dismissed in addition the Department will require that the Owner-Builder applicant to submit a letter of explanation regarding the circumstances that led to the bankruptcy.

(14) Must be a detached single-family residence or property located within the State of Texas; attached single-family residence may qualify under the Program for a rehabilitation loan. Manufactured homes are not eligible. All property taxes must be current prior to closing.

(15) The residence must be occupied as the principal residence of the Owner-Builder within thirty (30) days of the later of the end of the construction period or the closing of the loan. Any additional habitable structures must be removed from the property prior to closing. Portion of the former structure may be utilized as storage upon the Department's written approval prior to closing.

(16) Escrow Account--An account to which the borrower contributes monthly payments to cover the anticipated costs of real estate taxes, hazard and flood insurance premiums, and other related costs. The Department will require that up to two (2) months of reserves for hazard and/or flood insurance and property taxes to be collected at the time of closing and these funds must be deposited with the mortgage loan servicer. In addition, the Department will also require that the property taxes be prorated at the time of closing and those funds be deposited with the mortgage loan servicer. The Owner-Builders will be required to deposit monthly funds to an escrow account with the mortgage loan servicer in order to pay the taxes and insurance. This will ensure that funds are available to pay for the cost of real estate taxes, insurance premiums, and other assessments when they come due. These funds are included in the Owner-Builders monthly payment to the mortgage loan servicers. The mortgage loan servicer will establish and administer the escrow accounts in accordance with the Real Estate Settlement and Procedures Act of 1974 (RESPA).

(17) Non-Purchasing Spouse--An Owner-Builder applicant's spouse who does not apply for the loan will be required to execute the information disclosure form, the deed of trust as a "non-purchasing" spouse and will not be required to execute the note. For credit underwriting purposes the non-purchasing spouse's debts and obligations will be considered in the Owner-Builder total debt-to-income ratio. The Owner-Builder applicant will be qualified using obligations for which the Owner-Builder applicant and non-purchase spouse are personally or jointly liable. Only the income of the Owner-Builder applicant will be used in determining the total debt to income ratio. For Program eligibility purposes, the income of a non-applicant spouse must be included in the calculation of family income. Tax Returns, W2's and recent pay check stubs, or Verification of Employment must be submitted to document household income.

(u) Loan Assumption--A Program loan is assumable if the Department determines that the Owner-Builder applicant complies with all Program restrictions in effect at the time of the assumption.

§2.10. Owner-Builder Qualifications.

The Owner-Builder must:

(1) Own or be purchasing a piece of real property through a warranty deed or Contract for Deed;

(2) Not have an annual household income that exceeds 60% of the greater of the state or local area median family income as determined by HUD income guidelines;

(3) Demonstrate the willingness and ability to repay the loan;

(4) Execute a Self-Help Agreement committing to provide through personal labor at least 65% of the labor necessary to build or rehabilitate the proposed housing working through a state-certified NOHP; or provide an amount of labor equivalent to 65% in connection with building or rehabilitating housing for others through a state certified NOHP; provide through the noncontract labor of friends, family, or volunteers and through personal labor at least 65% of the labor necessary to build or rehabilitate the proposed housing by working through a state certified NOHP or if due to a documented disability or other limiting circumstances the Owner-Builder cannot provide the amount of personal labor otherwise required, provide through the noncontract labor of friends, family or volunteers at least 65% of the labor necessary to build or rehabilitate the proposed housing by working through a state certified NOHP;

(5) Not have liquid assets in excess of $25,000 (excluding retirement and/or 401K accounts);

(6) Successfully complete an Owner-Builder homeownership education class prior to loan funding;

(7) Be given priority for loans if the Owner-Builder has an income of less than $17,500 annually;

(8) Not be currently in delinquency or in default with child support and/or government loans;

(9) Not have any outstanding judgments and/or liens on the property.

§2.12. Property Guidelines and Related Issues.

(a) If the Nonprofit Owner-Builder Housing Provider (NOHP) is utilizing Program funds to construct the home they must conform to §2306.514 of the Texas Government Code.

(b) If the property is located within an incorporated area where certain building codes must be met, the Department will require a copy of the certificate of occupancy. If no certificate of occupancy is available from an incorporated area the NOHP must obtain a document from the local government entity showing that the home has passed all required building codes. A copy of the certificate of occupancy or any other document received from the local governing entity must be submitted to the Department upon completion of construction. If the property is located outside an incorporated area inspections will be required to be completed by a professional inspector licensed by the Texas Real Estate Commission. For all housing rehabilitation projects an initial and final inspection will be required. An initial inspection will be required for all reconstruction projects to determine that it is not cost effective for rehabilitation and therefore needs to be reconstructed. If the property is located in an incorporated area a certificate of occupancy will be required for all completed reconstruction and new construction projects. If the property is located outside an incorporated area a final inspection will be required for reconstruction and new construction projects.

(1) The initial inspection for rehabilitation must identify and prioritize areas in need of repair. A copy of the initial inspection reports must be provided to the Department and the homeowner.

(2) The final inspections for housing rehabilitation must ensure that the construction on the house is complete, that the home is safe, sound and sanitary. A copy of the final inspection report must be provided to the Department and the homeowner.

(3) The final inspections for reconstruction and new construction must ensure that the construction on the home is complete, that the home is safe, and that it meets, at a minimum, International Residential Code (IRC). IRC is a comprehensive residential code which establishes minimum construction requirements with plumbing, mechanical, energy, and electrical provisions. A copy of the final inspection report must be provided to the Department and the homeowner.

(4) The Contractor must ensure and verify that each construction contractor performing activities in the amount of $10,000.00 or more under the Contract is registered and maintains good standing with the Texas Residential Construction Commission.

(5) The Contractor must ensure and verify that each housing unit being rehabilitated in the amount of $10,000.00 or more under the Contract is registered with the Texas Residential Construction Commission.

(6) All final inspections must ensure that the construction on the house is complete and that the home is safe. In both instances any deficiencies noted on the certificate of occupancy or the third party inspector's report must be corrected prior to closing. Cosmetic issues such as paint, wall texture, etc. will not be required to be corrected since this is a self-help construction Program. If the Texas Residential Construction Commission registrations required in this chapter are no longer required by operation of law, such registrations must be obtained from the entity that succeeds to the applicable registration functions of the Texas Residential Construction Commission, if any.

(7) The NOHP and/or the Owner-Builder applicant will be responsible for the selection and/or the fee of a licensed inspector.

(c) Appraisals are required by the Department on each property prior to funding.

(d) Maximum loan to value ratio may not exceed 95%, the lien amounts of forgivable loans and/or grants will not be included in the loan-to-value calculation.

(e) Improvement Surveys are required on each property.

(f) Insurance requirements:

(1) Title Insurance. The title insurance must be written by a title insurer licensed to do business in the jurisdiction where the mortgaged property is located.

(A) Title Commitment. A copy of the preliminary title report including complete legal description, and copies of covenants, conditions and restrictions, easements, and any supplements thereto is required. The preliminary title report should not be more than thirty (30) days old at the time the submission package (Submission or Funding Package) is sent to the Department.

(B) Mortgagee's Policy. The Department requires a Mortgagee's policy of title insurance in the amount of the loan. The Mortgagee named shall be: "Texas Department of Housing and Community Affairs." Required endorsements include T-36 Environmental Endorsement for all loans made by the Department.

(2) Property Insurance.

(A) Builder's Risk is required where construction of the residence is being financed by the Department. At the end of the construction period, the binder must be endorsed to remove the "pending disbursements" clause.

(B) Hazard Insurance. The Department requires property insurance for protection against loss or damage from the following perils: fire, windstorm, hail, explosion, riot, and civil commotion, damage by aircraft, vehicles or smoke. Homeowner's policies or package policies that provide property and liability coverage are acceptable. All risk policies are acceptable. The amount of hazard insurance coverage at the time the loan is funded must be no less than 100% of the current insurable value of improvements. The Department will require that the premium for a twelve (12) month homeowner's policy and up to two (2) months of reserve be collected at closing and name the Department as loss payee.

(C) Flood insurance is required for all structures located in special flood hazard areas where the U.S. Federal Emergency Management Agency (FEMA) has mandated flood insurance coverage. In addition the Department requires a Life of Loan Flood Certification on all loans. The flood certification must be part of the Funding Package. Flood insurance is not required if the NOHP or Owner-Builder applicant obtains a Letter of Map Amendment from FEMA stating that the area is no longer classified as a special flood hazard area. The letter must include a map illustrating the amended flood hazard area. An Owner-Builder applicant may elect to obtain flood insurance even though flood insurance is not required. However, the Owner-Builder applicant may not be coerced into obtaining flood insurance unless it is required in accordance with this section. Evidence of insurance must be obtained prior to loan funding. Insurance premiums for at least twelve (12) months and up to two (2) months of reserves will be collected at closing. The Department must be named as loss payee on the policy.

§2.13. Nonprofit Owner-Builder Housing Program (NOHP) Certification.

(a) Definitions and Terms. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Applicant--A nonprofit organization that has submitted a request for certification as a NOHP to the Department. An Applicant for the Texas Bootstrap Loan Program must be a NOHP certified by the Department.

(2) Articles of Incorporation--A document that sets forth the basic terms of a corporation's existence and is the official recognition of the corporation's existence. The documents must evidence that they have been filed with the Office of the Secretary of State.

(3) Bylaws--A rule or administrative provision adopted by a corporation for its internal governance. Bylaws are enacted apart from the articles of incorporation. Bylaws and amendments to bylaws must be formally adopted in the manner prescribed by the organization's articles or current bylaws by either the organization's board of directors or the organization's members, whoever has the authority to adopt and amend bylaws.

(4) Resolutions--Formal action by a corporate board of directors or other corporate body authorizing a particular act, transaction, or appointment. Resolutions must be in writing and state the specific action that was approved and adopted, the date the action was approved and adopted, and the signature of person or persons authorized to sign resolutions. Resolutions must be approved and adopted in accordance with the corporate bylaws.

(b) Application Procedures for Certification of NOHP. An Applicant requesting certification as a NOHP must submit an application for NOHP certification in a form prescribed by the Department. The NOHP application must be submitted prior to submitting an application for Texas Bootstrap Loan Program Reservation system, and must be recertified every three (3) years. The application must include documentation evidencing the requirements of this subsection.

(1) Applicant must have the following legal status at the time of application to apply for certification as a NOHP:

(A) The Applicant must be organized as a nonprofit organization under the Texas Nonprofit Corporation Act or other state not-for-profit/nonprofit statute as evidenced by Charter or Articles of Incorporation.

(B) The Applicant must be registered and in good standing with the Office of the Secretary of State, State Comptroller's Office and the Texas Residential Construction Commission to do business in the State of Texas.

(C) No part of the nonprofit organization's net earnings may inure to the benefit of any member, founder, contributor, or individual, as evidenced by Charter or Articles of Incorporation.

(D) The Applicant must have the following tax status:

(i) A current tax exemption ruling from the Internal Revenue Service (IRS) under §501(c)(3), a charitable, nonprofit corporation, of the Internal Revenue Code of 1986, as evidenced by a certificate from the IRS that is dated 1986 or later. The exemption ruling must be effective on the date of the application and must continue to be effective while certified as a NOHP; or

(ii) Classification as a subordinate of a central organization non-profit under the Internal Revenue Code §501(c)(3), as evidenced by a current group exemption letter, that is dated 1986 or later, from the IRS that includes the Applicant. The group exemption letter must specifically list the Applicant.

(iii) A nonprofit organization's pending application for §501(c)(3) status cannot be used to comply with the tax status requirement under this subparagraph.

(E) The Applicant must have among its purposes the provision of decent housing that is affordable to low and moderate income people as evidenced by a statement in the organization's Charter, Articles of Incorporation, Resolutions or Bylaws.

(2) An Applicant must have the following capacity and experience listed in subparagraphs (A) and (B) of this paragraph.

(A) Conforms to the financial accountability standards of 24 CFR §84.21, "Standards of Financial Management Systems" as evidenced by:

(i) notarized statement by the Executive Director or chief financial officer of the organization in a form prescribed by the Department; or

(ii) certification from a Certified Public Accountant.

(B) Has a demonstrated capacity of at least one (1) year for carrying out mortgage loan origination and self-housing construction activities, as evidenced by resumes and/or statements that describe the experience of key staff members who have successfully completed projects similar to those to be assisted with Texas Bootstrap Loan Program funds; or contract(s) with consultant firms or individuals who have housing experience similar to projects to be assisted with Texas Bootstrap Loan Program funds, to train appropriate key staff of the organization.

(3) An Applicant must submit a current roster of all Board of Directors, including names and mailing addresses.

(4) A local or state government and/or public agency cannot qualify as a NOHP, but may sponsor the creation of a NOHP.

(5) Religious or Faith-based Organizations may sponsor a NOHP if the NOHP meets all the requirements of this section. While the governing board of a NOHP sponsored by a religious or a faith-based organization remains subject to all other requirements in this section, the faith-based organization may retain control over appointments to the board. If a NOHP is sponsored by a religious organization, the following restrictions also apply:

(A) Housing developed must be made available exclusively for the residential use of Program beneficiaries and must be made available to all persons regardless of religious affiliations or beliefs;

(B) A religious organization that participates in the Texas Bootstrap Loan Program may not use Texas Bootstrap Loan Program funds to support any inherently religious activities such as worship, religious instruction, or proselytizing; and

(C) Texas Bootstrap Loan Program funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. Sanctuaries, chapels, or other rooms which a faith-based NOHP uses as its principal place of worship are always ineligible;

(D) Compliance with subparagraphs (A) - (C) of this paragraph may be evidenced by the Organizations By-laws, Charter or Articles of Incorporation.

(6) A Colonia Self-Help Center as defined under Chapter 2306, Subchapter Z of the Texas Government Code is not required to complete the NOHP Certification process as long as it provides a letter from the appropriate funding entity demonstrating a good standing performance and/or certification standing.

(c) Program Design. Organizations must provide written evidence on how the Owner-Builder will meet the 65% sweat equity requirement.

(d) Applicant must provide details, such as number of houses they are proposing to build, type of proposed financing structure and construction timeliness in order to show evidence of its ability to carry out the Texas Bootstrap Loan Program.

(e) Applicant must provide copies of Program guidelines used to qualify Owner-Builders and homebuyer course curriculum in order to show evidence of its experience in qualifying potential Owner-Builders; providing education classes, counseling and training.

(f) Applicant must submit any past due audit to the Department in a satisfactory format on or before the Application deadline.

(g) Applicants must be in compliance in any existing or prior contracts awarded by the Department.

(h) The Department may certify NOHPs meeting all of the above criteria operated by a tax-exempt organization listed under §501(c)(3), Internal Revenue Code of 1986 to:

(1) qualify potential Owner-Builders for loans under this chapter;

(2) provide Owner-Builder education classes;

(3) assist Owner-Builders in building or rehabilitating housing; and

(4) originate and/or service loans.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 26, 2009.

TRD-200904853
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: November 15, 2009
Proposal publication date: August 7, 2009
For further information, please call: (512) 475-3916

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PART 6. TEXAS DEPARTMENT OF RURAL AFFAIRS

CHAPTER 255. TEXAS COMMUNITY DEVELOPMENT PROGRAM
SUBCHAPTER A. ALLOCATION OF PROGRAM FUNDS

10 TAC §255.7

The Texas Department of Rural Affairs (TDRA) adopts amendments to §255.7, concerning the Texas Capital Fund (Fund), without changes to the proposal as published in the August 28, 2009, issue of the *Texas Register* (34 TexReg 5849).

The amendments are adopted to increase the utility of this rural economic development program by simplifying the application process and expediting the selection of award recipients. The amendments allow the Fund to accept applications continuously throughout the year and make funding decisions on a monthly basis.

The amendments to §255.7 are made to revise the allocation of funding and streamline the application process of the Infrastructure and Real Estate Programs. The amendment to §255.7(a)(14) allows up to 70% of the allocated funding for the Infrastructure and Real Estate Program to be used to fund qualifying applications during the first six months of the calendar year. The amendment to §255.7(c) allows applications to be submitted at any time throughout the year. The amendment to §255.7(e) allows for applications to be funded on a monthly basis; and allows for the use of a shortened application. The adopted amendments apply to the Infrastructure and Real Estate Programs and will be effective January 1, 2010.

One comment was received from Kathy Goff that opposed eliminating the four grant periods citing that monthly funding decisions may disadvantage smaller communities. Ms. Goff also expressed support for shortening the application and suggests that it alone may bring about the desired affects of the proposed amendment. TDRA and the administering agency, Texas Department of Agriculture, disagree that the amendments will disadvantage smaller communities since more time will be available for all communities to submit applications and feel that the amendments will work together to create more jobs in non-entitlement communities throughout Texas.

The amendments to §255.7 are adopted under the Texas Government Code §487.052, which provides the Texas Department of Rural Affairs with the authority to adopt rules and administrative procedures to carry out the provisions of Chapter 487 of the Texas Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 21, 2009.

TRD-200904811
Charles S. (Charlie) Stone
Executive Director
Texas Department of Rural Affairs
Effective date: January 1, 2010
Proposal publication date: August 28, 2009
For further information, please call: (512) 936-6734

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 77. SERVICE CONTRACT PROVIDERS AND ADMINISTRATORS

The Texas Commission of Licensing and Regulation ("Commission") adopts the repeal of 16 Texas Administrative Code ("TAC") Chapter 77, §§77.1, 77.10, 77.21, 77.22, 77.70, 77.72, 77.80, and 77.90, and adopts new 16 TAC Chapter 77, §§77.1, 77.10, 77.20 - 77.23, 77.40 - 77.43, 77.70, 77.80, and 77.90, regarding service contract providers and administrators. Sections 77.10, 77.20 - 77.23, 77.40 - 77.43, 77.70, 77.80, and 77.90 are adopted with changes to the proposed text as published in the July 24, 2009, issue of the *Texas Register* (34 TexReg 4805), and these rules will be republished. There are no changes to the proposed text of §77.1 and it will not be republished. The repeal and new rules take effect November 16, 2009.

The existing rules at 16 TAC Chapter 77 implement the statutory requirements under Texas Occupations Code, Chapter 1304, the Service Contract Regulatory Act. The Department is adopting the repeal of the existing rules and the adoption of new rules in order to clarify and reflect the current policies, practices and procedures for registering and regulating service contract providers and administrators. The new rules compile the existing registration requirements found throughout the statute, rules, and registration forms into a comprehensive list of registration requirements. In addition, the new rules clarify and detail the providers' financial security obligations and the providers' responsibilities to their service contract holders.

The repeals and new rules were published in the July 24, 2009, issue of the *Texas Register.* The 30-day public comment period closed on August 24, 2009. The Department received public comments from the following interested parties: (1) Universal Underwriters Service Corporation (UUSC); (2) Service Contract Industry Council (SCIC); (3) GS Administrators, Inc. (GSAI); and (4) C.A.R.S. Protection Plus (C.A.R.S.). GSAI submitted a second comment after the written comment period closed. The public comments are summarized below, followed by the Department's responses.

Chapter 77 - General Comments

UUSC recommended that a system be developed that would permit registered service contract providers to act as administrators for other providers without the need to maintain a separate administrator's registration.

To the extent that the proposed rules would require service contract providers to revise printed materials, GSAI proposed allowing providers to exhaust their current supply of preprinted forms or in the alternative, a 90-120 day implementation date to print new forms.

Department Response: Regarding the comment from UUSC, the statute allows registered providers to administer their own contracts without obtaining a separate administrator registration. However, if the provider wishes to administer contracts for another provider, the first provider must obtain an administrator registration in addition to its provider registration. The Department cannot make the suggested change by rule.

Regarding the comment from GSAI, the Department is receptive to extending the implementation date to allow for the revision of certain printed materials. Under §77.70(a), which requires the provider's name on all written service contracts and advertising materials, the Department has extended the effective date for the written advertising materials until February 1, 2010. The provider is already required under the statute to have its name on the written service contracts.

§77.10 - Definitions

Provision: The statute defines "administrator."

The rule defines "service contract seller" or "seller" as a person, other than the provider of the service contract, who is responsible for marketing, offering, or selling service contracts, but is not contractually obligated to a service contract holder under the terms of a service contract.

Public Comments:

SCIC suggested adding the same definition of "administrator" that is found in the statute to the rules.

GSAI suggested that the definition of "service contract seller" be modified to make it clear that it does not encompass a third party administrator and that it only applies to persons selling contracts to consumers.

Department Response: Regarding the comment from SCIC, the definition of "administrator" is already found in the statute. The rules add definitions for terms that are used in the statute and rules, but are not defined in the statute. The Department declines to make the suggested change.

Regarding the comment from GSAI, the Department has modified the definition of seller to exclude providers and administrators, not just providers. The Department declines to limit the definition to apply only to person selling contracts to consumers. The definition reflects the Department's current interpretation of "seller."

§77.20 - Registration Requirements - Providers

Provision: Under §77.20(c)(3), the initial application includes submission of "a completed criminal history questionnaire from each controlling person as defined in Texas Occupations Code §1304.0035, if applicable."

Public Comment: GSAI stated that this provision appears to conflict with current practice and suggested that the criminal history form be combined into the application.

Department Response: Regarding the comment from GSAI, the criminal history questionnaire is currently a separate form from the biographical affidavit, and the rule reflects the current registration practice. Completion of the criminal history questionnaire is only required if the person responds to certain questions on the biographical affidavit indicating that the person has a criminal history that needs further explanation. The Department declines to make the suggested change.

§77.21 - Registration Renewal Requirements - Providers

Provision: Under §77.21(c)(4) and (c)(5), the renewal application includes submission of: a biographical affidavit or a no change form; and a completed criminal history questionnaire or a no change form.

Public Comment: GSAI suggested removing the "no change forms" under subsections (c)(4) and (c)(5). GSAI proposed that the Department adopt a process by which forms are provided only when there is a material changes to what is currently on file with the Department.

Department Response: Regarding the comment from GSAI, the Department uses the "no change forms" as an abbreviated method for renewing a registration without requiring the controlling person to fill out the biographical affidavit in full again; however, it places the responsibility on the controlling person to ensure and attest that his or her biographical information is still correct. The Department declines to make the suggested change to subsection (c)(4).

The Department has deleted the reference to the "no change form" under subsection (c)(5). This reference was mistakenly included in the proposed rules. Completion of the criminal history questionnaire is only required if the person responds to certain questions on the biographical affidavit indicating that the person has a criminal history that needs further explanation. No changes in the biographical affidavit would include no changes in criminal history.

§77.40 - Financial Security - General Requirements

Provision: §77.40(d) requires a provider to keep its financial security in effect until the later of: (1) two years the provider ceases to do business in this state; (2) two years after the provider's registration expires; or (3) the Executive Director receives satisfactory proof from the provider and determines that the provider has discharged or otherwise adequately met all obligations to its service contract holders in this state.

Public Comment: SCIC stated that the two years that providers must keep their financial security in effect after they cease doing business is unnecessary and would require providers to amend their current forms of financial security. SCIC proposed striking §77.40(d) in its entirety and replacing it with the following language: "(d) All forms of financial security must be kept in effect until the provider has discharged or otherwise adequately met all obligations to its service contract holders in this state."

Department Response: Regarding the comment from SCIC, this provision is one of several provisions that are being added to the rules to ensure that the provider fulfills its contractual and financial obligations to its service contract holders. The Department is requiring the financial security be kept in effect for an additional two years because of the Department's experience with several providers going out of business over the last few years. These providers have not met their obligations to their service contract holders who still have active service contracts. These providers state that they will no longer pay claims and that they will not refund the cost of the service contracts to the service contract holders. The only money that is available to attempt to fulfill the obligations to the service contract holders is the financial security filed with the Department.

The Department, however, has found when it attempts to file a claim against the financial security, the provider has let the financial security lapse or has cancelled the financial security before or at the time of going out of business. Violations by the provider occur when the provider fails to maintain financial security to ensure the performance of its obligations and when the provider fails to pay claims by service contract holders. These violations usually occur after the provider ceases operations or after its registration expires. Currently, the financial security is only in effect for the period of registration and only for violations that occur during the registration period. The Department needs for the financial security to continue after the provider ceases operations or its registration expires, so that the Department may file claims against the financial security for violations that occur when the provider fails to pay claims or perform its obligations to its service contract holders whose contracts extend beyond the provider's registration period. The Department declines to make the suggested change.

§77.41 - Financial Security - Reimbursement Insurance Policy

Provision: §77.41(c) requires a provider that uses a reimbursement insurance policy issued by a risk retention group (RRG) to disclose the names of the investors and the investors' percentage of ownership in the RRG.

Public Comment: SCIC proposed striking §77.41(c) for several reasons. SCIC claimed that this information is not easily attainable by a provider and it would be burdensome for the provider. SCIC stated that the risk retention groups doing business in Texas must register with the Texas Department of Insurance (TDI), so TDLR could get the information from TDI. SCIC claimed it is a duplication of regulation efforts by TDLR and TDI. SCIC also stated there is no distinction in the statute between a standard insurer and a RRG to require a distinction in the rules. Finally, SCIC stated that this provision does not provide any additional protection for consumers.

Department Response: The Department withdraws §77.41(c) at this time, not based on the comments from SCIC, but due to the limited resources for database programming. As a result of the 81st Legislative Session, the Department is in the process of implementing several new programs that require database programming. The Department has allocated its resources to these new programs and currently does not have the resources that would allow for the effective use of the information regarding the risk retention groups. The Department reserves the right to propose this provision again at a future date.

§77.70 - Responsibilities of the Registrant - Providers and Administrators.

§77.70(a)

Provision: §77.70(a) requires that the provider be identified on all written service contracts and advertising materials used by the provider, its administrator or its sellers.

Public Comment: SCIC stated that it supported §77.70(a) for the most part; however, SCIC wanted an exemption for market-

ing materials for service contracts issued by a manufacturer or its subsidiary on the manufacturer's products. In addition, SCIC proposed deleting marketing materials used by sellers from this requirement. SCIC stated that many service contract programs are provided on behalf of national retailers that advertise on a national basis, and that a retailer may have one company obligated under its contracts in Texas and another provider obligated in another state. SCIC claimed that the rule would require a national retailer to create Texas-only advertisements.

Department Response: Regarding the comment from SCIC, the Department proposed this rule because the public often receives letters and postcards in the mail advertising various service contracts, but some of these advertisements do not provide the name of the service contract provider, just a phone number, or they only include the seller's name. Since service contract sellers are not registered with the Department, it is important for the public and the Department to know the name of the provider who is financially and contractually responsible for a particular service contract being advertised and whether that provider is registered in Texas to do business. Exemptions to this provision for certain parties would defeat the purpose of the rule.

The Department believes this provision is consistent with Texas Occupations Code §1304.161 that states: "A provider or the provider's representative may not, in the provider's service contracts or literature: (1) make, permit, or cause to be made any false or misleading statement; or (2) deliberately omit a material statement if the omission would be considered misleading." The Department is mindful of the concerns of national retailers and has narrowly tailored this new provision to require only the name of the provider on the solicitation.

Based on the previous public comment from GSAI requesting additional time to revise printed materials, the Department has amended this rule so that identifying the provider's name on advertising materials will be effective February 1, 2010. The provider is already required under the statute to identify the provider's name on the service contracts, so there is no extension of the effective date for this requirement.

§77.70(c)

Provision: §77.70(c) requires a provider or its administrator to provide service contract holders with the provider's complaint resolution procedures.

Public Comment: GSAI stated that what constitutes a "complaint resolution process" is vague.

Department Response: Regarding the comment from GSAI, the Department proposed this provision in order to provide service contract holders with information about the provider's procedures for resolving contract holders' complaints without dictating what the provider's procedures should include. Whatever the provider's complaint resolution procedures are, the provider must give them to their service contract holders. The Department did not make any changes based on this comment.

§77.70(e) and (f)

Provision: §77.70(e) and (f) require a provider or its administrator to provide a copy of the service contract and a receipt to the service contract holder within 45 days from the date of purchase.

Public Comment: SCIC proposed to amend §77.70(e) and (f) to include the seller in the requirement and to provide the contract and the receipt within 45 days from the date the provider and/or administrator received notice of the purchase.

Department Response: Regarding the comment from SCIC, Texas Occupations Code §1304.154 places the responsibility on the provider to provide a receipt and a copy of the service contract to the service contract holder. The provider may appoint a registered administrator to fulfill this responsibility and other responsibilities under the statute, so administrators are included in the current rule and in the proposed rule. Since the statute does not give this responsibility to sellers, the Department did not include sellers in this provision. Providers are ultimately responsible for fulfilling this requirement, even if they use sellers to sell their service contracts.

The statute requires that the provider provide the service contract holder with the receipt and the copy of the contract "within a reasonable period after the date of purchase." (§1304.154) The existing rules require that a copy of the contract be provided to the contract holder "within 45 days from the date of purchase" (§77.70(e)). This provision has not been changed in the new rules. The existing rules, however, do not address the time frame for providing the receipt. The Department has drafted a specific rule regarding the receipt and has used the same time period - 45 days from the date of purchase - that is used for providing the copy of the contract.

Forty-five days is a reasonable period of time for a consumer to receive a receipt and a copy of the contract that he or she purchased. During that 45 days the consumer has no proof and is not able to use the contract that he or she has already purchased. Whatever method the provider uses to process the contracts that are sold by its sellers is the provider's business; however, the consumer should not have to wait more than 45 days after purchasing a service contract to receive it and be able to use it. The Department declines to make the suggested change.

§77.70(g)

Provision: §77.70(g) states that the provider is responsible for the activities of the service contract sellers used to sell the provider's service contracts.

Public Comments:

UUSC stated that this section should be eliminated or limited as it exposes providers for practices of the seller that are indirectly related to the sale of the contract but are outside the control or responsibility of the provider. Providers should not be responsible for the acts of their sellers that are outside the actual or implied authority of the seller, and they should not be responsible for fraud by the seller.

SCIC proposed amending §77.70(g). SCIC stated that the current language was too broad and suggested adding language to limit any responsibility on the part of the provider to activities of the seller only when the seller is acting with the scope of authority granted to the seller by the provider.

GSAI proposed that §77.70(g) be deleted from the rule because it is overly broad. It appeared to establish civil liability on the providers for activities of service contract sellers, and it placed responsibility on a provider for any activity of a seller regardless of whether the activity related to the sale. GSAI questioned the establishment of such liability through rulemaking rather than the legislative process.

In the alternative, GSAI offered language that is similar to what is contained in §1304.153(b), which states that the appointment

of an administrator does not affect a provider's responsibility to comply with this chapter. GSAI suggested the following language: "The engagement of a service contract seller by a provider does not affect a provider's responsibility to comply with these rules or the Texas Occupations Code §1304.004 et seq.".

In its second letter that was submitted after the written comment period closed, GSAI expanded on the language above. GSAI added language stating that if a provider uses service contract sellers to sell its contracts, there must be a written agreement between the provider and the seller. The agreement must set out each party's responsibilities, prohibit misrepresentation and unfair trade practices in the sale of the service contracts, and require compliance with Texas Occupations Code Chapter 1304 and these rules. GSAI also stated that all activities by the provider and the seller in conjunction with the sale of service contracts are subject to §77.90, Administrative Penalties and Sanctions.

C.A.R.S. opposed §77.70(g). C.A.R.S. argued that the Department does not have the statutory authority to adopt this rule. It further argued that TDLR may investigate a seller under Occupations Code §1304.007, and that the Attorney General or a private party may bring suit against a seller under the Deceptive Trade Practices Act. C.A.R.S. stated that TDLR should delete this rule.

Department Response: Regarding the comments on §77.70(g), the Department believes it has the legal authority to include this provision in the rules since the requirement is placed on the provider not the seller. Providers and administrators are required to be registered with the Department, not sellers. Also, the rule is consistent with the following statutory provisions that address the provider's responsibilities involving the sale of service contracts: Texas Occupations Code §§1304.154 (provider requirements), 1304.156 (form of contract and required disclosures), 1304.157 (returning a contract), 1304.158 (voiding a contract and refunds), and 1304.159 (canceling a contract). In addition, §1304.161 states: "A provider or the provider's representative may not, in the provider's service contracts or literature: (1) make, permit, or cause to be made any false or misleading statement; or (2) deliberately omit a material statement if the omission would be considered misleading." The provider may not avoid its responsibilities under the statute and rules regarding the sale of its service contracts by using sellers or other representatives who are not registered with the Department. If the provider uses sellers to market or sell its contracts, the provider is responsible for these activities as if the marketing and sales were performed by the provider itself.

That being said, it was not the Department's intention to establish civil liability for providers for any and all acts of its sellers regardless of whether the activities were related to the sale of the provider's contracts. The Department intended to make the provider responsible for its seller's marketing and sales activities as they relate to the marketing and sale of the provider's service contracts. The Department does not want the provider to avoid its responsibilities under the statute or rules by delegating marketing and sales activities to a seller.

In response to these public comments and comments made on the same provision contained in the proposed Identity Recovery Service Contract rules (34 TexReg 6046), the Department has narrowed the scope of the provision and has added a "safe harbor" provision for the provider. The Department further refined the safe harbor provision based on public comments made at the public Commission meeting held on October 20, 2009. These changes expanded the safe harbor to apply to the seller's marketing and sales activities related to the provider's service contracts, not just fraudulent activities by the seller, and lengthened the time period for correcting violations by the seller.

§77.70(k)

Provision: §77.70(k) requires a provider to notify the Department no later than 60 days prior to ceasing operations or not renewing its registration.

Public Comment: SCIC argued that §77.70(k) is unworkable, because a provider often may not know 60 days ahead of time that it is ceasing operations. SCIC encouraged the Department to simply require providers to notify the Department as soon as possible prior to ceasing operations or deciding to not renew its registration.

Department Response: Regarding the comment from SCIC, this provision is one of several provisions that are being added to the rules to ensure that the provider fulfills its contractual and financial obligations to its service contract holders. The Department has experienced several instances over the last few years of providers ceasing operations and not telling their service contract holders or the Department that they were going out of business and that they would no longer be honoring the service contracts. The service contract holders only find out weeks, months or even years later when they try to make claims on the service contracts and they discover that the provider is no longer in business. The Department often finds out when it starts receiving complaints from consumers or when the provider does not renew its registration with the Department the following year. Service contract providers like any other business entity should wind down business operations in an organized and proper manner. The Department needs to know in advance so that it can take action to preserve the financial security and to develop a plan for handling consumer complaints and claims. The Department declines to make the suggested change.

The Department has made a technical correction to §77.70(k), however, to delete the phrase "or not renewing its license." This language may unintentionally affect a provider that renews its license late but that is not going out of business. The intent of the provision is to address providers that cease operations, not those that late renew their licenses.

§77.70(l)

Provision: §77.70(l) requires the provider to submit certain information to the Department within 10 days of notifying the Department that the provider is ceasing operations or not renewing its license. Subsection (l)(1) requires submission of "the name(s) and the number of the active service contracts affected."

Public Comment: GSAI stated that subsection (l)(1) was vague and should be struck from the rule. Providers may market under separate brand names with the same form of contract, and it is unlikely that they track the number of contracts sold under a particular name. It is also unlikely that they track them on a per state basis. Matching names of contracts to the number of contracts is a burdensome requirement. Providing a list of the brand names, the total number of active Texas service contracts, and the customers' names should be sufficient information.

Department Response: Regarding the comment from GSAI, the Department needs to know the names of all of the various service contracts that a provider offers in Texas and the number of those contracts that are still active in Texas. This information is necessary for the Department to assess the scope and impact of

the situation and to develop a plan for handling consumer complaints and claims regarding those contracts. The Department will not strike the provision but will clarify it.

In addition, the Department has made a technical correction to §77.70(l) to delete the phrase "or not renewing its license." This language may unintentionally affect a provider that renews its license late but that is not going out of business. The intent of the provision is to address providers that cease operations, not those that late renew their licenses.

§77.70(m)

Provision: §77.70(m) requires a provider to notify its service contract holders no later than 30 days prior to ceasing operations or not renewing its registration.

Public Comment: SCIC argued that §77.70(m) is unworkable, because a provider often may not know ahead of time that it is ceasing operations. SCIC stated that even if a provider ceases its service contract business in the state, it is still obligated to perform its obligations to its existing contract holders. SCIC stated that it would be confusing and misleading to consumers to require the provider to notify them that the provider is ceasing operations in the state. SCIC wanted this provision deleted.

Department Response: Regarding the comment from SCIC, this provision is one of several provisions that are being added to the rules to ensure that the provider fulfills its contractual and financial obligations to its service contract holders. The Department agrees with SCIC that a provider that ceases its service contract business in the state is still obligated to perform its obligations to its existing contract holders. Unfortunately, that has not been the experience of the Department in dealing with service contract providers that cease operations in Texas.

The Department has experienced several instances over the last few years of providers ceasing operations and not telling their service contract holders that they were going out of business and that they would no longer be honoring the service contracts. The service contract holders only find out weeks, months or even years later when they try to make claims on the service contracts and they discover that the provider is no longer in business. Service contract providers like any other business entity should wind down business operations in an organized and proper manner. These providers need to provide notice to customers who have paid upfront and in full for service contracts (often multi-year contracts) what will happen with their contracts, including how any current or future claims against the service contracts will be paid and whether the service contract holders may receive a refund for the unused portion of the contracts.

The Department strongly disagrees with SCIC regarding the potential for consumer confusion. While consumers may be upset or frustrated, the Department does not believe consumers will be confused if the provider notifies its service contract holders that the provider is ceasing operations and informs them about what will happen with their active service contracts. In its experience, the Department knows consumers are confused when the provider ceases operations, disconnects its phone number, and leaves town without any notice to the consumers with active service contracts, and the consumers only find out later when they try and make claims on their service contracts. The Department declines to make the suggested change.

The Department has made a technical correction to §77.70(m), however, to delete the phrase "or not renewing its license." This language may unintentionally affect a provider that renews its license late but that is not going out of business. The intent of the provision is to address providers that cease operations, not those that late renew their licenses.

In addition to the changes identified above, the Department has made a few technical corrections to the rules as proposed. The Department has changed the terms "Commission," "Department," and "Executive Director" to lower case to match the use of the terms in the statute.

The Department has also reorganized the fees rule, §77.80, to separate provider fees and administrator fees into separate subsections. This change should make it easier to identify the appropriate fees. No new fees have been added, and no fee amounts have been changed.

16 TAC §§77.1, 77.10, 77.21, 77.22, 77.70, 77.72, 77.80, 77.90

The repeals are adopted under Texas Occupations Code, Chapter 51, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department. The repeals are also adopted under Texas Occupations Code, Chapter 1304, which establishes the service contract program and gives regulatory authority of this program to the Commission and the Department.

The statutory provisions affected by the repeals are those set forth in Texas Occupations Code, Chapters 51 and 1304. No other statutes, articles, or codes are affected by the adopted repeals.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Executive Director
Texas Department of Licensing and Regulation
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16 TAC §§77.1, 77.10, 77.20 - 77.23, 77.40 - 77.43, 77.70, 77.80, 77.90

The new rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department. The new rules also are adopted under Texas Occupations Code, Chapter 1304, which establishes the service contract program and gives regulatory authority of this program to the Commission and the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 1304. No other statutes, articles, or codes are affected by the adoption.

§77.10. Definitions.

The following words and terms, as used in this chapter and Texas Occupations Code, Chapter 1304, have the following meanings:

(1) "Service contract seller" or "seller" means a person, other than the provider or the administrator of the service contract, who is responsible for marketing, offering, or selling service contracts, but is not contractually obligated to a service contract holder under the terms of a service contract.

(2) "Third-party administration of a service contract" includes any of the following activities performed on behalf of a service contract provider:

(A) performing or arranging the collection, maintenance, or disbursement of money to compensate any party for claims or repairs pursuant to a service contract;

(B) participating in the processing or adjustment of claims arising under a service contract;

(C) maintaining records required by Texas Occupations Code, Chapter 1304; or

(D) complying with provider requirements, other than financial security requirements, of Texas Occupations Code, Chapter 1304.

(3) The term "third party administration of a service contract" does not include the performance of repairs, or clerical functions ancillary to the performance of repairs, by a repair facility that performs no other activities with respect to a service contract.

§77.20. Registration Requirements--Provider.

(a) No person may operate as a provider of service contracts, or offer to be a provider of service contracts, in this state without first registering with the department, unless the service contracts offered by such person are specifically exempt from the application of Texas Occupations Code, Chapter 1304.

(b) A registration is valid for one year from the date issued.

(c) Initial applications for registration must provide the department with all of the following required information, on forms prescribed by the executive director:

(1) a completed registration form;

(2) a completed biographical affidavit from each controlling person as defined in Texas Occupations Code §1304.0035;

(3) a completed criminal history questionnaire from each controlling person as defined in Texas Occupations Code §1304.0035, if applicable;

(4) the required fee; and

(5) proof of financial security as prescribed under §77.40.

(d) Not later than the 30th day after the date of a provider's initial registration, the provider must submit the following information to the department:

(1) a list of internet website addresses through which a consumer may purchase the provider's service contracts, if any;

(2) a list of administrator(s) appointed by the provider, if any, including each administrator's name, assumed name, street address, telephone number, and department registration number; and

(3) a list of sellers of the provider's service contracts, except those excluded under Texas Occupations Code §1304.1025(c)(2), including each service contract seller's name, assumed name, street address, and telephone number.

(e) Falsification of information on an application is cause for denial and/or revocation of the registration.

(f) The department may refuse to issue a registration if the applicant or a controlling person of the applicant has violated Texas Occupation Code, Chapter 1304, this chapter, or a rule or an order issued by the commission or executive director.

§77.21. Registration Renewal Requirements--Provider.

(a) In order for a provider to continue operating in this state, a registration must be renewed annually.

(b) Non-receipt of a registration renewal notice from the department does not exempt a person from any requirements of this chapter.

(c) Renewal applications for registration must provide the department with all of the following required information, on forms prescribed by the executive director:

(1) a completed registration form;

(2) the number of service contracts sold by the provider in the preceding 12-month period;

(3) the updated lists of information required under §77.20(d);

(4) a biographical affidavit from each controlling person as defined in Texas Occupations Code §1304.0035, or a form indicating there has been no change in the biographical affidavit since the previous registration or renewal from each controlling person;

(5) a completed criminal history questionnaire from each controlling person as defined in Texas Occupations Code §1304.0035, if applicable;

(6) the required fee; and

(7) proof of new or continuing financial security as prescribed under §77.40.

(d) Falsification of information on an application is cause for denial and/or revocation of the registration.

(e) The department may refuse to renew a registration if the applicant or a controlling person of the applicant has violated Texas Occupation Code, Chapter 1304, this chapter, or a rule or an order issued by the commission or executive director.

(f) A person shall not perform work requiring registration under Texas Occupations Code, Chapter 1304 or this chapter with an expired registration.

§77.22. Registration Requirements--Administrator.

(a) No person may operate as an administrator for a provider or offer to act as an administrator for a provider operating in this state without first registering with the department.

(b) A registration is valid for one year from the date issued.

(c) Initial applications for registration must provide the department with all of the following required information, on forms prescribed by the executive director:

(1) a completed registration form;

(2) the name and department registration number for each service contract provider(s) for which the person will act as an administrator;

(3) a list of the administrator's controlling persons as defined in Texas Occupations Code §1304.0035; and

(4) the required fee.

(d) Falsification of information on an application is cause for denial and/or revocation of the registration.

(e) The department may refuse to issue a registration if the applicant or a controlling person of the applicant has violated Texas Occupation Code, Chapter 1304, this chapter, or a rule or an order issued by the commission or executive director.

§77.23. Registration Renewal Requirements--Administrator.

(a) In order for an administrator to continue operating in this state, a registration must be renewed annually.

(b) Non-receipt of a registration renewal notice from the department does not exempt a person from any requirements of this chapter.

(c) Renewal applications for registration must provide the department with all of the following required information, on forms prescribed by the executive director:

(1) a completed registration form;

(2) the name and department registration number for each service contract provider(s) for which the person will act as an administrator;

(3) a list of the administrator's controlling persons as defined in Texas Occupations Code §1304.0035; and

(4) the required fee.

(d) Falsification of information on an application is cause for denial and/or revocation of the registration.

(e) The department may refuse to renew a registration if the applicant or a controlling person of the applicant has violated Texas Occupation Code, Chapter 1304, this chapter, or a rule or an order issued by the commission or executive director.

(f) A person shall not perform work requiring registration under Texas Occupations Code, Chapter 1304 or this chapter with an expired registration.

§77.40. Financial Security--General Requirements.

(a) A provider must maintain financial security to ensure the faithful performance of a provider's obligations to its service contract holders and for the benefit of those service contract holders who suffer actual financial loss due to the provider's failure to perform those obligations.

(b) A provider must submit proof of one of the following three forms of financial security that meets the requirements of Texas Occupations Code §1304.151 and/or §1304.152:

(1) a reimbursement insurance policy;

(2) a funded reserve account and a security deposit; or

(3) net worth of at least $100 million.

(c) All forms of financial security must be maintained by the provider for the entire time the provider continues to do business in this state or is registered to do business in this state.

(d) All forms of financial security must be kept in effect until the later of:

(1) two years after the provider ceases to do business in this state;

(2) two years after the provider's registration expires; or

(3) the executive director receives satisfactory proof from the provider and determines that the provider has discharged or otherwise adequately met all obligations to its service contract holders in this state.

(e) If any form of financial security is canceled or lapses during the term of the provider's registration, the provider may not issue a new service contract after the effective date of the cancellation or lapse, unless and until the provider files with the executive director a copy of a new form of financial security that meets the financial security requirements provided by Texas Occupations Code, Chapter 1304 and this chapter and that provides coverage after that date.

(f) Cancellation or lapse of the financial security does not affect the provider's liability for a service contract issued by the provider before or after the effective date of the cancellation or lapse.

§77.41. Financial Security--Reimbursement Insurance Policy.

(a) A provider that uses a reimbursement insurance policy to comply with the financial security requirements of Texas Occupations Code §1304.151 and §1304.152, will not be allowed to obtain or renew a registration unless the insurer issuing the policy has provided all of the information and met all of the requirements set forth in Texas Occupations Code §1304.152(a-1).

(b) A reimbursement insurance policy that is used to comply with the financial security requirements of Texas Occupations Code §1304.151 and §1304.152 must include:

(1) the "Service Contract Provider Texas Endorsement" prescribed by the executive director, or equivalent language; and

(2) copy of the approval letter from the Texas Department of Insurance for using the endorsement.

§77.42. Financial Security--Funded Reserve Account and Security Deposit.

(a) A provider that uses a funded reserve account and security deposit to comply with the financial security requirements of Texas Occupations Code §1304.151, will not be allowed to obtain or renew a registration unless the provider:

(1) maintains the funded reserve account and the security deposit at or above the financial levels required under §1304.151(b); and

(2) meets the requirements under this section.

(b) The funded reserve account maintained by the provider must:

(1) be kept separate from the provider's operating accounts; and

(2) not be used for any purpose other than to cover the provider's obligations under its service contracts that are issued and outstanding in this state.

(c) In addition to maintaining the funded reserve account, the provider must submit one of the following forms of security deposit:

(1) A surety bond that:

(A) is issued by a surety company authorized to do business in the State of Texas;

(B) conforms to the Texas Insurance Code;

(C) is on a department-approved form;

(D) is payable to the executive director for the satisfaction of eligible service contract holder claims; and

(E) states that the surety company will provide the department 60 days prior written notice of its intent to cancel the bond;

(2) A certificate of deposit that is assigned to the executive director;

(3) Securities of the type eligible for deposit by an authorized insurer in Texas;

(4) A deposit of cash or cash equivalents; or

(5) An original letter of credit that:

(A) is irrevocable;

(B) is issued by a qualified financial institution which is financially responsible in the amount of the letter of credit;

(C) does not require examination of the performance of the underlying transaction between the department and the provider;

(D) is payable to the department on demand or within a reasonably brief period of time after presentation of all required documents; and

(E) does not include any condition that makes payment to the department contingent upon the consent of or other action by the provider or other party.

§77.43. Financial Security--Minimum Net Worth.

A provider that maintains, or has a parent company maintain, a net worth or stockholder's equity of at least $100 million to comply with the financial security requirements of Texas Occupations Code §1304.151, will not be allowed to obtain or renew a registration unless the provider gives the department audited financial statements as described under §1304.151(c) and (d) or information for accessing and viewing the proof of net worth online.

§77.70. Responsibilities of Registrant--Provider and Administrator.

(a) The provider must clearly and conspicuously identify itself on all written service contracts and, effective February 1, 2010, on all written advertising materials that are used by the provider, its administrator(s), or its seller(s).

(b) The provider and/or any administrator appointed by the provider must provide service contract holders with a notification that meets all of the following requirements.

(1) The notification must provide the name, mailing address, and telephone number of the department.

(2) The notification must contain a statement that unresolved complaints concerning a registrant or questions concerning the regulation of service contract providers and administrators may be addressed to the department.

(3) The notification must be included on all written service contacts. The notification may be stamped on the contract or printed on a separate sheet and stapled to the contract.

(c) The provider and/or any administrator appointed by the provider must provide service contract holders with the provider's complaint resolution procedures.

(d) The provider and/or any administrator appointed by the provider must disclose the following information to service contract holders:

(1) the procedures and timeframes for returning a service contract in accordance with Texas Occupations Code §1304.157;

(2) the procedures and timeframes for voiding a service contract in accordance with Texas Occupations Code §1304.158;

(3) the procedures and timeframes for refunding the purchase price of the service contract to the service contract holder in accordance with Texas Occupations Code §1304.158; and

(4) the conditions in which the provider and/or administrator may cancel a service contract in accordance with Texas Occupations Code §1304.159.

(e) The provider and/or any administrator appointed by the provider must provide a copy of the service contract to the service contract holder within 45 days from the date of purchase.

(f) The provider and/or any administrator appointed by the provider must provide a receipt for or other written evidence of the purchase of a service contract to the service contract holder within 45 days from the date of purchase.

(g) Responsibility for Marketing and Sales Activities.

(1) The provider is responsible for the seller's marketing and sales activities as they relate to the marketing and sale of the provider's service contracts pursuant to Texas Occupations Code, Chapter 1304 and this chapter.

(2) The provider is not responsible for the seller's marketing and sales activities as they relate to the marketing and sale of the provider's service contracts if:

(A) the provider has a written contract with a seller;

(B) the contract requires the seller to follow Texas Occupations Code, Chapter 1304 and this chapter;

(C) the provider provides training to the seller about the product and the law;

(D) the provider immediately instructs a seller to correct its practices if the provider obtains knowledge that the seller is violating Texas Occupations Code, Chapter 1304 or this chapter;

(E) the provider terminates its use of a particular seller who fails to correct its practices within 14 days after being instructed by the provider to make corrections; and

(F) the provider notifies the department within 10 days of terminating a seller pursuant to subparagraph (E).

(h) A provider shall report to the department within 30 days any change in information required by §77.20 and §77.21.

(i) An administrator shall report to the department within 30 days any change in information required by §77.22 and §77.23.

(j) Upon notification by the department, the provider and/or any administrator appointed by the provider shall allow the department to audit records required to be maintained by Texas Occupations Code, Chapter 1304. These records include copies of the service contracts marketed, sold, administered or issued in this state.

(k) A provider must notify the department no later than 60 days prior to the provider ceasing operations in this state. A provider must notify the department as soon as possible after the provider files for bankruptcy or is placed into receivership and must provide the contact information for the bankruptcy trustee or receiver and the court handling these proceedings.

(l) Within 10 days after notifying the department in accordance with subsection (k), a provider must submit to the department:

(1) the names of the service contracts sold or issued by the provider in this state and the number of active service contracts under each service contract name;

(2) the names and addresses of the service contract holders with active service contracts in this state and the remaining amount of time left on these active service contracts; and

(3) any other information determined necessary by the department relating to the provider ceasing operations in this state.

(m) A provider must notify service contract holders with active service contracts in this state no later than 30 days prior to the provider ceasing operations in this state. The provider remains financially responsible to service contract holders with active service contracts in this state.

§77.80. Fees.

(a) All registration fees are non-refundable.

(b) Provider Fees.

(1) The initial registration fee for a service contract provider is $250.

(2) The annual renewal registration fee for a service contract provider is:

(A) $250 for registrants providing 0 to 250 service contracts;

(B) $500 for registrants providing 251 to 499 service contracts; and

(C) $1,000 for registrants providing 500 or more service contracts.

(3) The fee for a duplicate or amended registration certificate is $25.

(c) Administrator Fees.

(1) The initial registration fee for an administrator is $250.

(2) The annual renewal registration fee for an administrator is $250.

(3) The fee for a duplicate or amended registration certificate is $25.

(d) Late renewal fees for registrations issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

§77.90. Administrative Penalties and Sanctions.

If a person violates any provision of Texas Occupations Code, Chapter 1304, this chapter, or any rule or order of the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of Texas Occupations Code, Chapter 1304; Texas Occupations Code, Chapter 51; and any associated rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 26, 2009.

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Texas Department of Licensing and Regulation
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CHAPTER 90. IDENTITY RECOVERY SERVICE CONTRACT PROVIDERS AND ADMINISTRATORS

16 TAC §§90.1, 90.10, 90.20 - 90.24, 90.40 - 90.43, 90.70, 90.80, 90.90, 90.91

The Texas Commission of Licensing and Regulation ("Commission") adopts new rules at 16 Texas Administrative Code ("TAC"), Chapter 90, §§90.1, 90.10, 90.20 - 90.24, 90.40 - 90.43, 90.70, 90.80, 90.90, and 90.91, regarding identity recovery service contract providers and administrators. The new rules are adopted with changes to §§90.10, 90.20 - 90.24, 90.40 - 90.43, 90.70, 90.80, and 90.90 from the proposed text as published in the September 4, 2009, issue of the *Texas Register* (34 TexReg 6046), and these rules are republished. There are no changes to the proposed text of §90.1 and §90.91 as published in the September 4, 2009, issue of the *Texas Register* (34 TexReg 6046), and these rules will not be republished. The new rules take effect November 16, 2009.

Senate Bill (S.B.) 778 (81st Legislature, Regular Session, 2009) created a new chapter under the Texas Occupations Code, Chapter 1306, the Identity Recovery Service Contract Regulatory Act ("Act"). This Act gives regulatory authority to the Texas Department of Licensing and Regulation ("Department") over a segment of the identity recovery service contract industry effective September 1, 2009. Chapter 1306 applies to identity recovery service contracts that are sold to consumers at the time of purchase of a motor vehicle where the vehicle and the identity recovery service contract are financed. Chapter 1306 does not apply to identity recovery contracts that are sold at a location or by a means other than a motor vehicle dealership, nor does the Act apply to identity recovery contracts that are not financed with the vehicle.

The new rules at 16 TAC Chapter 90 detail the registration requirements, the financial security obligations, and other responsibilities for identity recovery service contract providers ("providers") and identity recovery service contract administrators ("administrators") that are covered by the Act.

The proposed new rules were published in the *Texas Register* on September 4, 2009. The 30-day public comment period closed on October 5, 2009. The Department received comments from one interested party, Merchant Information Solutions, Inc. The specific comments and the Department's responses are summarized below.

§90.10(1) - Definition of "Identity Recovery Service Contract Seller"

Provision: The rule defines "identity recovery service contract seller" or "seller" as "a person, other than the provider of the identity recovery service contract, who is responsible for marketing, offering, or selling service contracts, but is not contractually obligated to an identity recovery service contract holder under the terms of an identity recovery service contract."

Public Comment: Merchant Information Solutions, Inc. (MIS) requested clarification of the definition of "identity recovery service contract seller," so that the definition excluded both providers and administrators, not just providers.

Department Response: In response to the comment, the Department has clarified the definition of seller to exclude both providers and administrators.

§90.41(c) - Financial Security - Reimbursement Insurance Policy

Provision: §90.41(c) requires a provider that uses a reimbursement insurance policy issued by a risk retention group (RRG) to disclose the names of the investors and the investors' percentage of ownership in the RRG.

Public Comment: No public comments were submitted on this provision in the Identity Recovery Service Contract rules, but a comment was made on the same provision in the proposed Service Contract rules (34 TexReg 4805). Under the proposed Service Contract rules, the interested party raised several issues and requested that the provision be deleted.

Department Response: Under the proposed Service Contract rules, the Department stated that it would withdraw the provision, not based on the public comments, but due to limited resources for database programming. The Department currently does not have the resources to allow for the effective use of the information regarding risk retention groups. Since the Identity Recovery Service Contract statute and rules are modeled after the Service Contract statute and rules, the Department has made the same change to both sets of rules. The Department withdraws §90.41(c) at this time. The Department reserves the right to propose this provision again in the future.

§90.70(a) - Provider's Name on Written Documents

Provision: §77.70(a) requires that the provider be identified on all written service contracts and advertising materials used by the provider, its administrator or its sellers.

Public Comment: No public comments were submitted on this provision in the Identity Recovery Service Contract rules, but a comment was made on the same provision in the proposed Service Contract rules (34 TexReg 4805). Under the proposed Service Contract rules, the interested party requested that certain entities be exempted from the rule and that the implementation date be delayed to revise printed materials.

Department Response: In the Department's response to the comments under the Service Contract rules, the Department stated that it would not create any exemption for certain parties, but it would amend the rule so that identifying the provider's name on advertising materials will be effective February 1, 2010. The provider is already required under the statute to identify the provider's name on the service contracts, so there is no extension of the effective date for this requirement. Since the Identity Recovery Service Contract statute and rules are modeled after the Service Contract statute and rules, the Department has made the same change to both sets of rules. The effective date for identifying the identity recovery service contract provider's name on the advertising materials has been delayed until February 1, 2010.

§90.70(g) - Provider Responsible for Seller's Marketing and Sales Activities

Provision: §90.70(g) states that a provider is responsible for the seller's activities related to the marketing and sale of the identity recovery service contracts.

Public Comment: MIS requested the elimination of this provision. MIS asserted that the provision is outside the legal authority of Chapter 1306 and that the Department already has the authority to investigate sellers under the statute. In the alternative, MIS suggested the addition of a safe harbor protection for a provider where the seller engages in fraudulent acts. This safe harbor would be available if: the provider has a written contract with the seller; the contract requires the seller to comply with the Texas identity recovery service contract law and rules; the provider provides training to the seller regarding the product and law; and the provider instructs the seller to correct its practices if the provider obtains knowledge that the seller is violating Texas law.

Department Response: Regarding the comments from MIS, the Department believes it has the legal authority to include this provision in the rules since the requirement is placed on the provider not the seller. Providers and administrators are required to be registered with the Department, not sellers. Also, the rule is consistent with the following statutory provisions that address the provider's responsibilities involving the sale of identity recovery service contracts: Texas Occupations Code §1306.104 (provider requirements), §1306.106 (form of contract and required disclosures), §1306.107 (returning a contract), 1306.108 (voiding a contract and refunds), and §1306.109 (canceling a contract). In addition, §1306.111 states: "A provider or the provider's representative may not, in the provider's identity recovery service contracts or literature: (1) make, permit, or cause to be made any false or misleading statement; or (2) deliberately omit a material statement if the omission would be considered misleading." The provider may not avoid its responsibilities under the statute and rules regarding the sale of its identity recovery service contracts by using sellers or other representatives who are not registered with the Department. If the provider uses sellers to market or sell its contracts, the provider is responsible for these activities as if the marketing and sales were performed by the provider itself.

That being said, it was not the Department's intention to establish civil liability for providers for any and all acts of its sellers regardless of whether the activities were related to the sale of the provider's identity recovery service contracts. The Department intended to make the provider responsible for its seller's marketing and sales activities as they relate to the marketing and sale of the provider's identity recovery service contracts. The Department does not want the provider to escape its responsibilities under the statute or rules by delegating marketing and sales activities to a seller.

In response to these public comments and the comments made on the same provision contained in the proposed Service Contract rules (34 TexReg 4805), the Department has narrowed the scope of the provision and has added a "safe harbor" provision for the provider. The Department further refined the safe harbor provision based on public comments made at the public Commission meeting held on October 20, 2009. These changes expanded the safe harbor protection to include the seller's marketing and sales activities related to the provider's identity recovery service contracts, not just fraudulent activities by the seller, and lengthened the time period for correcting violations by the seller.

§90.70(l) - Providing Information to Department When Ceasing Operations

Provision: §90.70(l) requires the provider to submit certain information to the Department within 10 days of notifying the Department that the provider is ceasing operations in Texas. Subsection (l)(1) requires submission of the name(s) and the number of the active service contracts affected.

Public Comment: No public comments were submitted on this provision in the Identity Recovery Service Contract rules, but a comment was made on the same provision in the proposed Service Contract rules (34 TexReg 4805). Under the proposed Service Contract rules, a comment was made that subsection (l)(1)

is vague and burdensome and that it should be struck from the rule.

Department Response: In the Department's response to the comment under the proposed Service Contract rules, the Department stated that it would not strike the provision but would clarify it. Since the Identity Recovery Service Contract statute and rules are modeled after the Service Contract statute and rules, the Department has made the same change to both sets of rules. Section 90.77(l)(1) has been clarified.

In addition to the changes identified above, the Department has made a few technical corrections to the rules as proposed. The Department has changed the terms "Commission," "Department," and "Executive Director" to lower case to match the use of the terms in the statute.

The Department has also reorganized the fees rule, §90.80, to move the duplicate or amended fee provision, which was proposed as a stand-alone fee applicable to both providers and administrators, and to place this same provision under the provider fees subsection and under the administrator fees subsection. This change will move all provider fees together and all administrator fees together under the appropriate categories. No new fees have been added, and no fee amounts have been changed.

The new rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department. The new rules also are adopted under Texas Occupations Code, Chapter 1306, which establishes the identity recovery service contract program and gives regulatory authority of this program to the Commission and the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 1306. Texas Occupations Code, Chapters 1304 and 2306 are also affected because the definitions of "service contract" and "vehicle protection product" have been expanded to include identity recovery services. Chapter 1304 is also affected because the required financial security under Chapter 1304 may be used to meet the financial security requirements under Chapter 1306. No other statutes, articles, or codes are affected by the adoption.

§90.10. Definitions.

The following words and terms, as used in this chapter and Texas Occupations Code, Chapter 1306, have the following meanings:

(1) "Identity recovery service contract seller" or "seller" means a person, other than the provider or the administrator of the identity recovery service contract, who is responsible for marketing, offering, or selling identity recovery service contracts, but is not contractually obligated to an identity recovery service contract holder under the terms of an identity recovery service contract.

(2) "Third-party administration of an identity recovery service contract" includes any of the following activities performed on behalf of an identity recovery service contract provider:

(A) performing or arranging the collection, maintenance, or disbursement of money to compensate any party for claims or repairs pursuant to an identity recovery service contract;

(B) participating in the processing or adjustment of claims arising under an identity recovery service contract;

(C) maintaining records required by Texas Occupations Code, Chapter 1306; or

(D) complying with provider requirements, other than financial security requirements, of Texas Occupations Code, Chapter 1306.

§90.20. Registration Requirements--Provider.

(a) No person may operate as a provider of identity recovery service contracts, or offer to be a provider of identity recovery service contracts, in this state without first registering with the department, unless the identity recovery service contracts offered by such person are specifically exempt from the application of Texas Occupations Code, Chapter 1306.

(b) A registration is valid for one year from the date issued.

(c) Initial applications for registration must provide the department with all of the following required information, on forms prescribed by the executive director:

(1) a completed registration form;

(2) a completed biographical affidavit from each controlling person as defined in Texas Occupations Code §1306.004;

(3) a completed criminal history questionnaire from each controlling person as defined in Texas Occupations Code §1306.004, if applicable;

(4) a list of administrator(s) appointed by the provider, if any, including each administrator's name, assumed name, street address, telephone number, and department registration number;

(5) a list of sellers of the provider's identity recovery service contracts, including each seller's name, assumed name, street address, and telephone number;

(6) the required fee; and

(7) proof of financial security as prescribed under §90.40.

(d) Falsification of information on an application is cause for denial and/or revocation of the registration.

(e) The department may refuse to issue a registration if the applicant or a controlling person of the applicant has violated Texas Occupation Code, Chapter 1306, this chapter, or a rule or an order issued by the commission or executive director.

§90.21. Registration Renewal Requirements--Provider.

(a) In order for a provider to continue operating in this state, a registration must be renewed annually.

(b) Non-receipt of a registration renewal notice from the department does not exempt a person from any requirements of this chapter.

(c) Renewal applications for registration must provide the department with all of the following required information, on forms prescribed by the executive director:

(1) a completed registration form;

(2) a biographical affidavit from each controlling person as defined in Texas Occupations Code §1306.004, or a form indicating there has been no change in the biographical affidavit since the previous registration or renewal from each controlling person;

(3) a completed criminal history questionnaire from each controlling person as defined in Texas Occupations Code §1306.004, if applicable;

(4) an updated list of administrator(s) appointed by the provider, if any, including each administrator's name, assumed name, street address, telephone number, and department registration number;

(5) an updated list of sellers of the provider's identity recovery service contracts, including each seller's name, assumed name, street address, and telephone number;

(6) the required fee; and

(7) proof of new or continuing financial security as prescribed under §90.40.

(d) Falsification of information on an application is cause for denial and/or revocation of the registration.

(e) The department may refuse to renew a registration if the applicant or a controlling person of the applicant has violated Texas Occupation Code, Chapter 1306, this chapter, or a rule or an order issued by the commission or executive director.

(f) A person shall not perform work requiring registration under Texas Occupations Code, Chapter 1306 or this chapter with an expired registration.

§90.22. Ongoing Registration Requirements--Providers.

(a) A provider must pay quarterly fees based on the number of identity recovery service contracts sold or issued in this state.

(b) Not later than the 30th day after the date each calendar quarter ends, a provider must report to the department, in a manner prescribed by the executive director, the number of identity recovery service contacts sold or issued to consumers in this state during the calendar quarter and submit to the department a fee equal to one dollar ($1) for each of those contracts.

(c) The calendar quarter ends on the following dates: March 31, June 30, September 30 and December 31. The due dates for reporting the number of contracts and submitting the appropriate fees under subsection (b) are: April 30, July 30, October 30, and January 30.

(d) Failure of the provider to report the number of contracts as described in subsection (b) is cause for denial and/or revocation of the registration.

(e) Failure of the provider to submit the fee as described in subsection (b) is cause for denial and/or revocation of the registration.

(f) Falsification of information required under subsection (b) is cause for denial and/or revocation of the registration.

§90.23. Registration Requirements--Administrator.

(a) No person may operate as an administrator for a provider or offer to act as an administrator for a provider operating in this state without first registering with the department.

(b) A registration is valid for one year from the date issued.

(c) Initial applications for registration must provide the department with all of the following required information, on forms prescribed by the executive director:

(1) a completed registration form;

(2) a list of providers for which the person will act as an administrator, including each provider's name, assumed name, street address, telephone number, and department registration number;

(3) a list of the administrator's controlling persons as defined in Texas Occupations Code §1306.004; and

(4) the required fee.

(d) Falsification of information on an application is cause for denial and/or revocation of the registration.

(e) The department may refuse to issue a registration if the applicant or a controlling person of the applicant has violated Texas Occupation Code, Chapter 1306, this chapter, or a rule or an order issued by the commission or executive director.

§90.24. Registration Renewal Requirements--Administrator.

(a) In order for an administrator to continue operating in this state, a registration must be renewed annually.

(b) Non-receipt of a registration renewal notice from the department does not exempt a person from any requirements of this chapter.

(c) Renewal applications for registration must provide the department with all of the following required information, on forms prescribed by the executive director:

(1) a completed registration form;

(2) an updated list of providers for which the person will act as an administrator, including each provider's name, assumed name, street address, telephone number, and department registration number;

(3) a list of the administrator's controlling persons as defined in Texas Occupations Code §1306.004; and

(4) the required fee.

(d) Falsification of information on an application is cause for denial and/or revocation of the registration.

(e) The department may refuse to renew a registration if the applicant or a controlling person of the applicant has violated Texas Occupation Code, Chapter 1306, this chapter, or a rule or an order issued by the commission or executive director.

(f) A person shall not perform work requiring registration under Texas Occupations Code, Chapter 1306 or this chapter with an expired registration.

§90.40. Financial Security--General Requirements.

(a) A provider must maintain financial security to ensure the faithful performance of a provider's obligations to its identity recovery service contract holders and for the benefit of those identity recovery service contract holders who suffer actual financial loss due to the provider's failure to perform those obligations.

(b) A provider must submit proof of one of the following three forms of financial security that meets the requirements of Texas Occupations Code §1306.101 and/or §1306.102:

(1) a reimbursement insurance policy;

(2) a funded reserve account and a security deposit; or

(3) net worth of at least $100 million.

(c) All forms of financial security must be maintained by the provider for the entire time the provider continues to do business in this state or is registered to do business in this state.

(d) All forms of financial security must be kept in effect until the later of:

(1) two years after the provider ceases to do business in this state;

(2) two years after the provider's registration expires; or

(3) the executive director receives satisfactory proof from the provider and determines that the provider has discharged or otherwise adequately met all obligations to its identity recovery service contract holders in this state.

(e) If any form of financial security is canceled or lapses during the term of the provider's registration, the provider may not issue a new identity recovery service contract after the effective date of the

cancellation or lapse, unless and until the provider files with the executive director a copy of a new form of financial security that meets the financial security requirements provided by Texas Occupations Code, Chapter 1306 and these rules and that provides coverage after that date.

(f) Cancellation or lapse of the financial security does not affect the provider's liability for an identity recovery service contract issued by the provider before or after the effective date of the cancellation or lapse.

(g) If a provider registered under Texas Occupations Code, Chapter 1304 also registers under Texas Occupations Code, Chapter 1306, the financial security used to comply with Chapter 1304 may be used to fulfill the requirements of Chapter 1306 provided that:

(1) the provider identifies, in a manner prescribed by the department, the names and registration numbers of both entities being covered by the financial security;

(2) the amount of financial security maintained must reflect the provider's combined financial obligations to its contract holders under Texas Occupations Code, Chapters 1304 and 1306; and

(3) the provider submits proof to the department that the amount of financial security maintained reflects the provider's combined financial obligations to its contract holders under Texas Occupations Code, Chapters 1304 and 1306.

§90.41. Financial Security--Reimbursement Insurance Policy.

(a) A provider that uses a reimbursement insurance policy to comply with the financial security requirements of Texas Occupations Code §1306.101 and §1306.102, will not be allowed to obtain or renew a registration unless the insurer issuing the policy has provided all of the information and met all of the requirements set forth in Texas Occupations Code §1306.102(b).

(b) A reimbursement insurance policy that is used to comply with the financial security requirements of Texas Occupations Code §1306.101 and §1306.102 must include:

(1) the "Identity Recovery Service Contract Provider Texas Endorsement" prescribed by the executive director, or equivalent language; and

(2) copy of the approval letter from the Texas Department of Insurance for using the endorsement.

§90.42. Financial Security--Funded Reserve Account and Security Deposit.

(a) A provider that uses a funded reserve account and security deposit to comply with the financial security requirements of Texas Occupations Code §1306.101, will not be allowed to obtain or renew a registration unless the provider:

(1) maintains the funded reserve account and the security deposit at or above the financial levels required under Texas Occupations Code §1306.101(b); and

(2) meets the requirements under this section.

(b) The funded reserve account maintained by the provider must:

(1) be kept separate from the provider's operating accounts; and

(2) not be used for any purpose other than to cover the provider's obligations under its identity recovery service contracts that are issued and outstanding in this state.

(c) In addition to maintaining the funded reserve account, the provider must submit one of the following forms of security deposit:

(1) A surety bond that:

(A) is issued by a surety company authorized to do business in the State of Texas;

(B) conforms to the Texas Insurance Code;

(C) is on a department-approved form;

(D) is payable to the executive director for the satisfaction of eligible identity recovery service contract holder claims; and

(E) states that the surety company will provide the department 60 days prior written notice of its intent to cancel the bond;

(2) A certificate of deposit that is assigned to the executive director;

(3) Securities of the type eligible for deposit by an authorized insurer in Texas;

(4) A deposit of cash or cash equivalents; or

(5) An original letter of credit that:

(A) is irrevocable;

(B) is issued by a qualified financial institution which is financially responsible in the amount of the letter of credit;

(C) does not require examination of the performance of the underlying transaction between the department and the provider;

(D) is payable to the department on demand or within a reasonably brief period of time after presentation of all required documents; and

(E) does not include any condition that makes payment to the department contingent upon the consent of or other action by the provider or other party.

§90.43. Financial Security--Minimum Net Worth.

A provider that maintains, or has a parent company maintain, a net worth or stockholder's equity of at least $100 million to comply with the financial security requirements of Texas Occupations Code §1306.101, will not be allowed to obtain or renew a registration unless the provider gives the department audited financial statements as described under Texas Occupations Code §1306.101(c) and (d) or information for accessing and viewing the proof of net worth online.

§90.70. Responsibilities of Registrant--Provider and Administrator.

(a) The provider must clearly and conspicuously identify itself on all written identity recovery service contracts and, effective February 1, 2010, on all written advertising materials that are used by the provider, its administrator(s), or its seller(s).

(b) The provider and/or any administrator appointed by the provider must provide identity recovery service contract holders with a notification that meets all of the following requirements.

(1) The notification must provide the name, mailing address, and telephone number of the department.

(2) The notification must contain a statement that unresolved complaints concerning a registrant or questions concerning the regulation of identity recovery service contract providers and administrators may be addressed to the department.

(3) The notification must be included on all written identity recovery service contracts. The notification may be stamped on the contract or printed on a separate sheet and stapled to the contract.

(c) The provider and/or any administrator appointed by the provider must provide identity recovery service contract holders with the provider's complaint resolution procedures.

(d) The provider and/or any administrator appointed by the provider must disclose the following information to identity recovery service contract holders in writing and in clear understandable language that is easy to read:

(1) the person or persons who are covered under the identity recovery service contract;

(2) the price of the identity recovery service contract separate from the purchase price of the automobile and any other products or services that are financed with the vehicle;

(3) the term of the identity recovery service contract;

(4) any conditions that may change the stated term of the identity recovery service contract, including if the identity recovery service contract holder:

(A) pays off the automobile early;

(B) makes late payments or defaults on the payments on the automobile;

(C) refinances the automobile; or

(D) sells or transfers title to the automobile;

(5) all required disclosures in accordance with Texas Occupations Code §1306.106;

(6) any exclusions, limitations, conditions or restrictions regarding the scope of services, cancellation, or transferability of the identity recovery service contract in accordance with Texas Occupations Code §1306.106;

(7) the procedures and timeframes for returning an identity recovery service contract in accordance with Texas Occupations Code §1306.107;

(8) the procedures and timeframes for voiding an identity recovery service contract in accordance with Texas Occupations Code §1306.108;

(9) the procedures and timeframes for refunding the purchase price of the identity recovery service contract to the identity recovery service contract holder in accordance with Texas Occupations Code §1306.108; and

(10) the conditions in which the provider and/or administrator may cancel an identity recovery service contract in accordance with Texas Occupations Code §1306.109.

(e) The provider and/or any administrator appointed by the provider must provide a copy of the identity recovery service contract to the identity recovery service contract holder within 45 days from the date of purchase.

(f) The provider and/or any administrator appointed by the provider must provide a receipt for or other written evidence of the purchase of an identity recovery service contract to the identity recovery service contract holder within 45 days from the date of purchase.

(g) Responsibility for Marketing and Sales Activities.

(1) The provider is responsible for the seller's marketing and sales activities as they relate to the marketing and sale of the provider's identity recovery service contracts pursuant to Texas Occupations Code, Chapter 1306 and this chapter.

(2) The provider is not responsible for the seller's marketing and sales activities as they relate to the marketing and sale of the provider's identity recovery service contracts if:

(A) the provider has a written contract with a seller;

(B) the contract requires the seller to follow Texas Occupations Code, Chapter 1306 and this chapter;

(C) the provider provides training to the seller about the product and the law;

(D) the provider immediately instructs a seller to correct its practices if the provider obtains knowledge that the seller is violating Texas Occupations Code, Chapter 1306 or this chapter;

(E) the provider terminates its use of a particular seller who fails to correct its practices within 14 days after being instructed by the provider to make corrections; and

(F) the provider notifies the department within 10 days of terminating a seller pursuant to subparagraph (E).

(h) A provider shall report to the department within 30 days any change in information required by §90.20 and §90.21.

(i) An administrator shall report to the department within 30 days any change in information required by §90.23 and §90.24.

(j) Upon notification by the department, the provider and/or any administrator appointed by the provider shall allow the department to audit records required to be maintained by Texas Occupations Code, Chapter 1306. These records include copies of the identity recovery service contracts marketed, sold, administered or issued in this state.

(k) A provider must notify the department no later than 60 days prior to the provider ceasing operations in this state. A provider must notify the department as soon as possible after the provider files for bankruptcy or is placed into receivership and must provide the contact information for the bankruptcy trustee or receiver and the court handling these proceedings.

(l) Within 10 days after notifying the department in accordance with subsection (k), a provider must submit to the department:

(1) the names of the identity recovery service contracts sold or issued by the provider in this state and the number of active identity recovery service contracts under each contract name;

(2) the names and addresses of the identity recovery service contract holders with active identity recovery service contracts in this state and the remaining amount of time left on these active identity recovery service contracts; and

(3) any other information determined necessary by the department relating to the provider ceasing operations in this state.

(m) A provider must notify identity recovery service contract holders with active identity recovery service contracts in this state no later than 30 days prior to the provider ceasing operations in this state. The provider remains financially responsible to identity recovery service contract holders with active identity recovery service contracts in this state.

§90.80. Fees.

(a) All registration fees are non-refundable.

(b) Provider Fees.

(1) The initial registration fee for a provider is $1,000.

(2) The annual renewal registration fee for a provider is $1,000.

(3) The quarterly contract fee for a provider is $1 per contract sold or issued in the state in the previous calendar quarter as provided under §90.22.

(4) The fee for a duplicate or amended registration certificate is $25.

(c) Administrator Fees.

(1) The initial registration fee for an administrator is $1,000.

(2) The annual renewal registration fee for an administrator is $250.

(3) The fee for a duplicate or amended registration certificate is $25.

(d) Late renewal fees for registrations issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

§90.90. Administrative Penalties and Sanctions.

If a person violates any provision of Texas Occupations Code, Chapter 1306, this chapter, or any rule or order of the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of Texas Occupations Code, Chapter 1306; Texas Occupations Code, Chapter 51; and any associated rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 26, 2009.

TRD-200904849
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: November 16, 2009
Proposal publication date: September 4, 2009
For further information, please call: (512) 463-7348

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER AA. COMMISSIONER'S RULES ON SCHOOL FINANCE

19 TAC §61.1013

The Texas Education Agency (TEA) adopts the repeal of §61.1013, concerning additional funding for certain school districts. The repeal is adopted without changes to the proposed text as published in the September 4, 2009, issue of the *Texas Register* (34 TexReg 6056) and will not be republished. The section implements the provision of additional state aid for certain school districts through the 2002-2003 school year. The adopted repeal is necessary because of the expiration of the rule and of its authorizing statute, the Texas Education Code (TEC), §42.2513, as added by House Bill (HB) 3343, 77th Texas Legislature, 2001.

The TEC, §42.2513, as added by HB 3343, 77th Texas Legislature, 2001, authorized the commissioner of education to adopt rules to implement the provision of additional state aid for certain school districts through the 2002-2003 school year. The commissioner exercised rulemaking authority to adopt 19 TAC §61.1013, Gap Funding, effective December 2, 2001.

The TEC, §42.2513, as added by HB 3343, 77th Texas Legislature, 2001, specified an expiration date of September 1, 2003, for the section. In addition, 19 TAC §61.1013(e) specifies an expiration date of September 1, 2003, in alignment with statute.

The adopted repeal of 19 TAC §61.1013 repeals a section that has expired and whose statutory authorization has expired.

No changes were made to the rule since published as proposed.

The adopted repeal has no procedural and reporting implications. The adopted repeal has no locally maintained paperwork requirements.

The TEA determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the rule action began September 4, 2009, and ended October 5, 2009. No public comments were received.

The repeal is adopted under the TEC, §42.2513, as added by House Bill 3343, 77th Texas Legislature, 2001, which authorized the commissioner of education to adopt rules to implement the provision of additional funding for certain school districts through the 2002-2003 school year. The TEC, §42.2513, as added by House Bill 3343, 77th Texas Legislature, 2001, expired effective September 1, 2003.

The repeal implements the TEC, §42.2513, as added by House Bill 3343, 77th Texas Legislature, 2001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 23, 2009.

TRD-200904831
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: November 12, 2009
Proposal publication date: September 4, 2009
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.5

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to §153.5, Fees, without changes to the proposed text as published in the September 11, 2009, issue

of the *Texas Register* (34 TexReg 6251), which will not be republished. The amendments create a fee of $30 for prospective applicants for a license or certification who request an evaluation of their criminal history pursuant to House Bill 963 (81st Legislature), which created a process by which applicants for occupational licenses may seek a determination regarding their criminal history prior to filing an application for licensure. The amendments also increase licensing fees by $50/year, as follows: the fee to apply for or renew a (two-year) general certification will increase from $260 to $360, the fee to apply for or renew a (two-year) residential certification will increase from $210 to $310, the fee to apply for or renew a (two-year) license (including provisional licenses) will increase from $185 to $285, and the fee to apply for or renew a (one-year) appraiser trainee approval will increase from $105 to $155.

The reasoned justification for the amendments is that the agency will raise sufficient revenue to fund the items granted under Senate Bill 1, 81st Legislature, Regular Session, 2009.

The Board received 20 substantially similar comments during the notice and comment period regarding adoption of the amendments. These commenters, including the Foundation Appraisers Coalition of Texas (FACT) and some of its members, wrote in opposition to the fee increase, noting that fees were increased in 2007 to fund additional enforcement staff, requesting more time to allow the additional staff to have an impact on the complaint backlog, and expressing concern that the increase is unduly burdensome to appraisers in light of the percentage increase and current economic climate.

The Board respectfully disagrees that these are reasons not to adopt the increased fees. The Board operates under the oversight of the federal Appraisal Subcommittee (ASC), which requires that complaint cases be resolved within 12 months absent special documented circumstances. Continued failure to comply with ASC requirements can result in decertification of the TALCB, which would render Texas appraisers unable to perform appraisals for federally-related transactions (the vast majority of real estate transactions). For the last several years, the TALCB has experienced increasing complaint numbers, resulting in a significant backlog and an inability to close all cases within 12 months. Additional staff resulting from 2008-2009 appropriations have increased the Board's ability to resolve complaints, but current staffing levels have proven insufficient to keep pace with a 60% increase in complaints since FY 2007 and the needs of state and federal law enforcement agencies that frequently call on TALCB staff to assist in criminal actions involving mortgage fraud, as required by the 2007 Legislature in House Bill 716. Furthermore, while the increase is notable when expressed as a percentage of current licensing fees, Texas's appraiser licensing fees after the increase will remain comparable to the fees of many other states. At the October 16, 2009 meeting of the TALCB, FACT withdrew its opposition to the amendments.

The amendments are adopted under the Texas Occupations Code, §1103.156, Fees.

The statute affected by this adoption is Texas Occupations Code, Chapter 1103. No other statute, code, or article is affected by the amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 21, 2009.

TRD-200904808
Devon V. Bijansky
General Counsel
Texas Appraiser Licensing and Certification Board
Effective date: November 10, 2009
Proposal publication date: September 11, 2009
For further information, please call: (512) 465-3900

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22 TAC §153.9

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to §153.9, Applications. The rule is adopted with changes to the proposed text as published in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6252) and will be republished. The amendments reflect revised application fees, consistent with amendments to 22 TAC §153.5 adopted elsewhere in this issue, clarify the requirements regarding education evaluations, and adopt by reference 17 new and revised application forms. The changes to the forms primarily reflect formatting changes; however, the forms also expand and clarify the criminal background questions and harmonize, when possible, the instructions and certification sections at the end of the forms. A multi-purpose application form was divided into three separate applications: Application for Appraiser License, TALCB Form AL-0; Application for Certification - Certified Residential Appraiser, TALCB Form CRA-0; and Application for Certification - Certified General Appraiser, TALCB Form CGA-0. The Request for Inactive Status (For Expired Certification of License Within One Year of Expiration Date), TALCB Form RISE-0, was also created for expired licensees and certificate holders, based on the inactive status form for currently licensed or certified appraisers. The form previously called "Supplement to Application for Certification or License by Reciprocity" was renamed "Application for Certification or License by Reciprocity" to reflect that it is a stand-alone form. Separate ACE extension request forms for provisional licensees and for other license types were combined into a single form.

Two of the forms have been revised since the rule was proposed. The revised forms are form AER-0, ACE Extension Request, and RISE-0, Request for Inaction Status (For Expired Certification of License Within One Year of Expiration Date). The revisions update the fees as adopted in this issue in 22 TAC §153.5, Fees. The changes to the forms as adopted that were not in the proposed rule do not change the nature or scope so much that they could be deemed a different rule or different forms. The rule and forms as adopted do not affect individuals other than those contemplated by the rule and forms as proposed. Because the fees are separately adopted, the rule and forms as adopted do not impose more onerous requirements than the proposed versions and do not materially alter the issues raised in the proposed rule or forms. Changes in the adopted forms reflect non-substantive variations from the proposal to comport with the fee changes adopted elsewhere in this issue.

The reasoned justification for these amendments is greater clarity and consistency in TALCB's application and licensing processes.

No comments were received regarding the amendments as proposed.

The amendments are adopted under the Texas Occupations Code, §1103.151, Rules Relating to Certificates and Licenses.

The statute affected by this adoption is Texas Occupations Code, Chapter 1103. No other statute, code, or article is affected by the amendments.

§153.9. Applications.

(a) A person desiring to be certified or licensed as an appraiser, approved as an appraiser trainee, or registered as a temporary non-resident appraiser shall file an application using forms prescribed by the Board. The Board may decline to accept for filing an application that is materially incomplete or that is not accompanied by the appropriate fee. Except as provided by the Act, the Board may not grant a certification, license or approval of trainee status to an applicant unless the applicant:

(1) pays the required fees;

(2) satisfies any experience and education requirements established by the Act or by these sections;

(3) successfully completes any qualifying examination prescribed by the board;

(4) provides all supporting documentation or information requested by the board in connection with the application;

(5) satisfies all unresolved enforcement matters and requirements with the board; and

(6) meets any additional or superseding requirements established by the Appraisal Qualifications Board.

(b) Prior to submitting an application, an applicant must submit a completed education evaluation request form along with the appropriate fee. If the Board determines that the applicant has met current education requirements for the applicable license or certification, it shall notify the applicant that his or her education has been approved. Any such approval shall then remain valid for one year from the date the Board received the education evaluation request. If the Board determines that the applicant has not completed all required education, the applicant has until one year from the date the Board received the request to meet all education requirements and submit an application for licensure or the education evaluation request will expire. If the education requirements change while the education evaluation request is pending, any evaluation issued by the Board after the new requirements take effect will be based on then-current requirements. If the education requirements change after the Board has notified the applicant that his or her education satisfies the Board's requirements but before the applicant submits an application, the applicant must meet any additional education requirements before the application will be processed.

(c) The Texas Appraiser Licensing and Certification Board adopts by reference the following forms published by and available from the Board, P.O. Box 12188, Austin, Texas 78711-2188, www.talcb.state.tx.us:

(1) Application for Appraiser License, TALCB Form AL-0;

(2) Application for Certification - Certified Residential Appraiser, TALCB Form CRA-0;

(3) Application for Certification - Certified General Appraiser, TALCB Form CGA-0;

(4) Application for Certification or License by Reciprocity, TALCB Form CLR-0;

(5) Application for Approval as an Appraiser Trainee, TALCB Form AAT-0;

(6) Application for Provisional Appraiser License, TALCB Form PAL-0;

(7) Affidavit Declining Sponsorship, TALCB Form ADS-0;

(8) Application for Temporary Non-Resident Appraiser Registration, TALCB Form TNAR-0;

(9) Request for Extension of Temporary Non-Resident Appraiser Registration, TALCB Form NRE-0;

(10) Request for Inactive Status (For Currently Certified or Licensed Appraisers), TALCB Form RIS-0;

(11) Request for Inactive Status (For Expired Certification of License Within One Year of Expiration Date), TALCB Form RISE-0;

(12) Request for Active Status, TALCB Form RAS-0;

(13) ACE Extension Request, TALCB Form AER-0;

(14) Change of Address, TALCB Form COA-0;

(15) Addition or Termination of Appraiser Trainee Sponsorship, TALCB Form ATS-0;

(16) Appraiser Experience Affidavit, TALCB Form AEA-0;

(17) Appraisal Experience Explanation, TALCB Form AEE-0.

(d) An application may be considered void and subject to no further evaluation or processing if an applicant fails to provide information or documentation within 60 days after the Board makes written request for the information or documentation.

(e) A certification, license, or appraiser trainee approval is valid for the term for which it is issued by the Board unless suspended or revoked for cause and unless revoked, may be renewed in accordance with the requirements of §153.17 of this title (relating to Renewal of Certification, License or Trainee Approval).

(f) The Board may deny certification, licensing, approval as an appraiser trainee, or registration for non-resident temporary practice to an applicant who fails to satisfy the board as to the applicant's honesty, trustworthiness, and integrity.

(g) The Board may deny certification, licensure, approval as an appraiser trainee, or registration for non-resident temporary practice to an applicant who submits incomplete, false, or misleading information on the application or supporting documentation.

(h) An application shall be considered void and subject to no further evaluation or processing if the applicant fails to provide acceptable documentation that all requirements for licensure, certification, or approval as an appraiser trainee have been met within one year of the date the application was received by the Board.

(i) When an application is denied by the Board, no subsequent application will be accepted within one year of the application denial.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 21, 2009.

TRD-200904809

Devon V. Bijansky
General Counsel
Texas Appraiser Licensing and Certification Board
Effective date: November 10, 2009
Proposal publication date: September 11, 2009
For further information, please call: (512) 465-3900

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22 TAC §153.19

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to §153.19, Licensing and Certification for Persons with Criminal Histories, without changes to the proposed text as published in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6254), which will not be republished. The amendments serve two primary purposes: (1) clarify that the TALCB's licensing requirements for persons with criminal histories comply with Chapter 53 of the Texas Occupations Code and (2) establish rules to implement the House Bill 963 requirement that the agency issue a criminal history evaluation letter to prospective applicants for licensure or certification.

First, the amendments more closely track the language of Chapter 53 regarding grounds for denial of or action against a license or certification. The amendments clarify that the agency must consider the factors in subsection (d) in evaluating the qualification for licensure of every applicant with a criminal history and that automatic revocation only applies in cases in which a licensee is imprisoned.

Second, the amendments add subsection (g), which outlines the process by which a person may request and receive a criminal history evaluation letter. New subsection (g) provides that the same standards for processing license applications apply to the criminal history evaluation letter process.

The reasoned justification for the amendments is greater clarity and consistency in TALCB's application and licensing processes.

No comments were received regarding the amendments as proposed.

The amendments are adopted under the Texas Occupations Code, §1103.151, Rules Relating to Certificates and Licenses.

The statute affected by this adoption is Texas Occupations Code, Chapter 1103. No other statute, code, or article is affected by the amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 23, 2009.

TRD-200904832
Devon V. Bijansky
General Counsel
Texas Appraiser Licensing and Certification Board
Effective date: November 12, 2009
Proposal publication date: September 11, 2009
For further information, please call: (512) 465-3900

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22 TAC §153.24

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to §153.24, Processing a Complaint, without changes to the proposed text as published in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6255), which will not be republished. The amendments enable the Board and the commissioner to designate a staff member to sign off on dismissals of enforcement complaints.

The reasoned justification for these amendments is greater efficiency in TALCB's enforcement processes.

No comments were received regarding the amendments as proposed.

The amendments are adopted under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Texas Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under §1103.151, Rules Relating to Certificates and Licenses and §1103.154, Rules Relating to Professional Conduct.

The statute affected by this adoption is Texas Occupations Code, Chapter 1103. No other statute, code, or article is affected by the amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200904833
Devon V. Bijansky
General Counsel
Texas Appraiser Licensing and Certification Board
Effective date: November 12, 2009
Proposal publication date: September 11, 2009
For further information, please call: (512) 465-3900

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PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.6

The Texas Funeral Service Commission (commission) adopts an amendment to §203.6, concerning Provisional Licensees, with changes to the proposed text as published in the August 14, 2009, issue of the *Texas Register* (34 TexReg 5465).

The adopted amendment adds new subsection (o) to §203.6. The new subsection provides that the commission may issue under certain circumstances a provisional license to practice embalming or funeral directing to a person who was attending a school or college of mortuary science that was accredited at the time of the person's enrollment even though the school or college of mortuary science may have lost its accreditation subsequent to the person's enrollment. Before issuing a provisional license to such a person, the commission will require that the person acknowledge that he or she understands that even though he

or she may be allowed to enter the appropriate provisional program, the person will not be eligible for a funeral director's or embalmer's license unless the school or college of mortuary sciences regains its accreditation prior to the expiration of the maximum 24 month period described in another subsection or unless the student transfers to and graduates from an accredited school or college of mortuary science.

The circumstances leading up to the adoption of this new subsection involved the fact that a college of mortuary sciences in the State of Texas was threatened with the loss of accreditation. Section 651.253(a)(3), Texas Occupations Code specifically states that for a person to be eligible to receive a funeral director's license or an embalmer's license the person must have graduated from an accredited school or college of mortuary science. Therefore, it appeared to the commission that, pursuant to current law, if the college lost its accreditation, a person who graduated after accreditation was lost and before accreditation was regained would not be eligible to receive a funeral director's or an embalmer's license from the State of Texas based on graduation from that particular college of mortuary science. On the other hand, the commission concluded that the provisions of §651.302, Texas Occupations Code relating to provisional licensure were sufficiently flexible to allow the commission to continue to issue provisional licenses to persons who had enrolled in the college of mortuary science during the time it was accredited under the circumstances and with the restrictions stated in new §203.6(o). The college of mortuary science in question did in fact lose its accreditation on September 2, 2009.

The commission received one set of comments on the proposed amendment from a college of mortuary sciences in the State of Texas (college). The comments were not received during the prescribed comment period, but, even so, the commission wishes to respond to the comments.

Comment: Will the proposed rule allow a college student to obtain a regular license even if the college is not accredited at the time the student graduates?

Response: As circulated, proposed §203.6(o) will not allow a person to obtain a regular license based on graduation from the college during the time the college is not accredited. The commission determined that in order to provide as much relief as possible to students affected by the loss of accreditation, it would proceed to adopt the rule to benefit students with respect to provisional licensure as published for comment with one non-substantive exception (see below). However, the commission did instruct its staff to review the situation to see whether further relief could be provided to the students of the college through another rulemaking.

Comment: Would a college student who is issued a provisional license by operation of [the] proposed rule be able to obtain a regular license if he/she then transfers to and graduates from an accredited school, even if the college does not regain its accreditation during the twenty-four (24) month period of their provisional license? In other words, does the commission intend to make an applicant's license contingent on the college's ability to obtain reaccredidation?

Response: While it was not the intent of the commission in the circulated draft of proposed §203.6(o) to make a person's licensure contingent on the college's ability to regain accreditation, the commission added language at final adoption of the rule to make it clear that a person will be eligible to receive a "regular" embalmer's of funeral director's license if the person transfers to and graduated from an accredited college of school of mortuary science.

Comment: Will the proposed rule benefit currently enrolled students if the college's appeal is denied before the rule takes effect?

Response: The commission will not apply the rule in such a way as to penalize students who wish to apply for a provisional license and who were enrolled at the college prior to the date it lost its accreditation.

The amendment is adopted under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

§203.6. Provisional Licensees.

(a) Participants in the provisional licensure program may serve as provisional licensees only in funeral establishments or commercial embalming establishments licensed by the commission, and all work must be performed under the direct and personal supervision of a duly licensed funeral director or embalmer, depending on the provisional license. The provisional funeral director program may not be served in a commercial embalming establishment.

(b) Provisional licensees must work in a funeral establishment or commercial embalming establishment a minimum of 17 hours per week or 73 hours per month, or as otherwise permitted by the commission, under actual working conditions directly related to funeral directing and/or embalming.

(c) The provisional licensure period is a minimum of 12 and a maximum of 24 consecutive months, beginning on the date of the first case for which the licensee receives credit from with the commission. The provisional licensure programs for funeral director and embalmer may be served simultaneously.

(d) Provisional licenses issued after the effective date of this amendment expire on the last day of the month twelve months from their issue date. No fees shall be refunded to provisional licensees who fail to complete the program.

(e) Of the 60 cases required for each provisional licensure program, at least 10 must be complete cases and performed and reported during the last three months of the program. A complete funeral directing case consists of all major actions from the time of first call through interment or other disposition of the body; a complete embalming requires the provisional embalmer to handle all major actions included in §203.16 of this title (relating to Requirements Relating to Embalming) performed on a particular body. Cases performed in mortuary college may count toward the required cases if the college certifies to the commission that the cases were performed.

(f) Provisional licensees shall retain copies of all training reports with supporting documentation for all case credit claimed for 2 years from the date of the training report.

(g) A provisional embalmer shall assist in the embalming of six autopsied remains during the course of the provisional embalmer program. Autopsied cases completed while in an accredited mortuary college may count toward the six required autopsy cases if the college certifies to the commission that the cases were performed.

(h) Provisional licensees must file with the commission a training/case report for each month of the provisional license program by the 10th day of the next month as outlined in Texas Occupations Code, §651.304. Each report must consist of the actual training/case report only. All supporting documentation will be kept by the provisional licensee's sponsor, not the commission. Training/case report submission post marked after the 10th day of the month will not be accepted.

The licensee will not be given credit for those training/case reports and those months will not count toward the 12 required months. An additional month will be added to the provisional program for every month the training/case report is late. In any month in which the provisional licensee does not perform a case, the provisional licensee must file a "notwithstanding" report with the commission, and that month will not count toward the 12 required months. Additionally, if a licensee fails to file a report for a month that is counted as a "notwithstanding" and additional month will be added to the provisional program for every month the licensee files a "notwithstanding". If a provisional licensee files "notwithstanding" reports for two consecutive months, the licensee is required to restart the provisional licensee program. Similarly, provisional licensees who fail to file a case report within 90 days after receiving the provisional license shall submit a new provisional license application and pay a new provisional license fee.

(i) It is the responsibility of the sponsor of the provisional, the funeral director in charge of the establishment, and the provisional licensee to schedule case work sufficient for reporting in the provisional program. Penalties for failure to file case reports in a timely manner may lie against the sponsor of the provisional licensee. The commission may start a provisional licensure program over if the provisional licensee fails on two occasions to timely file a case report.

(j) Each training/case report shall be certified by the licensee under whom the provisional licensee performed the work. The supervising licensee and the provisional licensee both are subject to disciplinary action if the information submitted is not true and accurate.

(k) Examination Requirements

(1) Applicants for licensure as a funeral director from the certificate program must sit for the Texas State Board Examination administered by the International Conference of Funeral Service Examining Boards, Inc. (International Conference).

(2) Applicants for licensure who hold associate of applied science degrees are required to sit, as applicable, for either or both of the National Board Examinations in Funeral Directing and Embalming administered by the International Conference.

(3) All applicants for licensure shall sit for the State Mortuary Law Examination administered by the commission.

(4) A passing score is 75% for each examination described in paragraphs (1) - (3) of this subsection. Passing scores are not determined by averaging scores on two or more examinations.

(l) If a provisional licensee leaves the employment of a funeral director or embalmer, the funeral director or embalmer must file an affidavit as described in Texas Occupations Code, §651.304(d) within fifteen (15) days of employment termination.

(m) A student enrolled in an accredited mortuary college must have the college forward a letter of enrollment prior to entering the provisional program.

(n) Upon the completion of the provisional license program, as defined as the provisional licensee meeting all the requirements for regular licensure, the sponsor of the provisional licensee shall notify in writing of the same by submitting the number of cases performed while the licensee was under the sponsorship of said sponsor. The commission shall cross check the information provided with the information held by the commission to ensure each provisional licensee has met all requirements. All information submitted is subject to inspection. Once confirmed the commission shall issue to the provisional licensee a written sponsor affidavit to be completed by the sponsor. In addition the commission shall issue a written letter outlining the fees required for regular licensure. The sponsor shall execute and provide to the commission the written affidavit attesting to the proficiency of the provisional licensee in those areas observed.

(o) While, pursuant to §651.253, Texas Occupations Code, a person is not eligible for a funeral director's or embalmer's license from the commission unless the person shall have graduated from an accredited school or college of mortuary science, the commission may, pursuant to §651.302, Texas Occupations Code, issue a provisional license to practice funeral directing or embalming to a person who is enrolled in a school or college of mortuary science that has lost its accreditation if the school or college or mortuary science was accredited at the time the student enrolled. The commission will not issue such a provisional license to practice funeral directing or embalming unless:

(1) the person signs an acknowledgement that the person understands that the person is not eligible for a funeral director's or embalmer's license unless the school or college of mortuary science regains its accreditation during the maximum 24 consecutive months provided by subsection (c) of this section; or

(2) the student transfers to an accredited school or college of mortuary science.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 20, 2009.

TRD-200904776
O. C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Effective date: November 9, 2009
Proposal publication date: August 14, 2009
For further information, please call: (512) 936-2466

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PART 11. TEXAS BOARD OF NURSING

CHAPTER 211. GENERAL PROVISIONS

22 TAC §211.7

INTRODUCTION. The Texas Board of Nursing (Board) adopts amendments to §211.7, concerning *Executive Director.* The amendments are adopted without changes to the proposed text as published in the September 4, 2009, issue of the *Texas Register* (34 TexReg 6075) and will not be republished.

REASONED JUSTIFICATION. The amendments to §211.7 are adopted under the Occupations Code §§301.453(a), 301.4531, 301.501, 301.502, 301.651 - 301.657, and 301.151 and are necessary for consistency with adopted §213.32 of this title (relating to Corrective Action Proceedings and Schedule of Administrative Fines). The Board is simultaneously adopting amendments and new paragraphs to §213.32 of this title, which are necessary to: (i) implement Senate Bill (SB) 1415, enacted by the 81st Legislature, Regular Session, effective September 1, 2009; which adds new Subchapter N to the Occupations Code Chapter 301; (ii) revise and clarify the amount of administrative fines that may be imposed upon an individual in a disciplinary action; and (iii) clarify that the Executive Director of the Board is authorized to dispose of certain violations of Chapter 301 and Board policy and rule without the ratification of the Board. These adopted amend-

ments and new paragraphs are also published in this issue of the *Texas Register.*

Specifically, the adopted amendments to §211.7(f) are necessary for consistency with the provisions of adopted §213.32(7). Under adopted §213.32(7), the Executive Director is authorized to dispose of the specified violations in adopted §213.32(2) and adopted §213.32(5) through a fine and/or remedial education, without the ratification of the Board. Further, adopted §213.32(2) addresses violations that may be resolved through a corrective action under the Occupations Code Subchapter N. The former provisions of §211.7(f) did not address corrective actions. Prior to the enactment of SB 1415, a corrective action was not an available mechanism through which a violation of Chapter 301 or Board policy or rule could be resolved. As such, the provisions of former §211.7(f) only applied to disciplinary actions. The adopted amendments to §211.7(f) correct this inconsistency by clarifying that the Executive Director may accept orders issued under both adopted §213.32(2), relating to corrective actions, and §213.32(5), relating to disciplinary actions. Further, adopted §211.7(f) makes clear that the Executive Director may accept such orders without Board ratification, which is consistent with the adopted provisions of §213.32(7). Finally, adopted §211.7(f) re-emphasizes that the Executive Director must report summaries of dispositions to the Board at its regular meetings, which is also consistent with the provisions of adopted §213.32(7).

HOW THE SECTIONS WILL FUNCTION. Adopted §211.7(f)(1) provides that the Executive Director of the Board is authorized to accept orders issued under §213.32(2) and §213.32(5) on behalf of the Board, and that ratification of the Board is not necessary. Further, adopted §211.7(f)(1) provides that the Executive Director is required to report summaries of dispositions to the Board at its regular meetings.

SUMMARY OF COMMENTS. The Board did not receive any comments on the proposal.

STATUTORY AUTHORITY. The amendments are adopted under the Occupations Code §§301.453(a), 301.4531, 301.501, 301.502, 301.651 - 301.657, and 301.151. The Occupations Code §301.453(a) provides that, if the Board determines that a person has committed an act listed in §301.452(b), the Board shall enter an order imposing one or more of the following: (1) denial of the person's application for a license, license renewal, or temporary permit; (2) issuance of a written warning; (3) administration of a public reprimand; (4) limitation or restriction of the person's license, including limiting to or excluding from the person's practice one or more specified activities of nursing or stipulating periodic board review; (5) suspension of the person's license for a period not to exceed five years; (6) revocation of the person's license; or (7) assessment of a fine. The Occupations Code §301.4531(a) states that the Board by rule shall adopt a schedule of the disciplinary sanctions that the Board may impose under Chapter 301. In adopting the schedule of sanctions, the Board shall ensure that the severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action. The Occupations Code §301.4531(b) states, in determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the Board shall consider: (i) whether the person is being disciplined for multiple violations of either Chapter 301 or a rule or order adopted under Chapter 301 or has previously been the subject of disciplinary action by the Board and has previously complied with Board rules and Chapter 301; (ii) the seriousness of the violation; (iii) the threat to public safety; and (iv) any mitigating factors. The Occupations Code §301.4531(c) provides that, in the case of a person described by §301.4531(b)(1)(A), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a single violation; and in the case of a person described by §301.4531(b)(1)(B), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a person who has not previously been the subject of disciplinary action by the Board. The Occupations Code §301.501 provides that the Board may impose an administrative penalty on a person licensed or regulated under Chapter 301 who violates Chapter 301 or a rule or order adopted under Chapter 301. The Occupations Code §301.502(a) states that the amount of the administrative penalty may not exceed $5,000 for each violation. Further, each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The Occupations Code §301.502(b) states that the amount of the penalty shall be based on: (i) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts and the hazard or potential hazard created to the health, safety, or economic welfare of the public; (ii) the economic harm to property or the environment caused by the violation; (iii) the history of previous violations; (iv) the amount necessary to deter a future violation; (v) efforts made to correct the violation; and (vi) any other matter that justice may require. The Occupations Code §301.651 provides that "corrective action" means a fine or remedial education imposed under §301.652. The Occupations Code §301.652(a) states that the Board may impose a corrective action on a person licensed or regulated under Chapter 301 who violates Chapter 301 or a rule or order adopted under Chapter 301. The corrective action: (i) may be a fine, remedial education, or any combination of a fine or remedial education; (ii) is not a disciplinary action under Subchapter J; and (iii) is subject to disclosure only to the extent a complaint is subject to disclosure under §301.466. The Occupations Code §301.652(b) authorizes the Board to adopt guidelines for the types of violations for which a corrective action may be imposed. The Occupations Code §301.653 states that, if the Executive Director determines that a person has committed a violation for which a corrective action may be imposed under the guidelines adopted under §301.652(b), the Executive Director may give written notice of the determination and recommendation for corrective action to the person subject to the corrective action. The notice may be given by certified mail. The notice must: (i) include a brief summary of the alleged violation; (ii) state the recommended corrective action; and (iii) inform the person of the person's options in responding to the notice. The Occupations Code §301.654 states that, not later than the 20th day after the date the person receives the notice under §301.653, the person may accept in writing the Executive Director's determination and recommended corrective action or reject the Executive Director's determination and recommended corrective action. The Occupations Code §301.655(a) states that, if the person accepts the Executive Director's determination and satisfies the recommended corrective action, the case is closed. The Occupations Code §301.655(b) states that, if the person does not accept the Executive Director's determination and recommended corrective action as originally proposed or as modified by the Board or fails to respond in a timely manner to the Executive Director's notice as provided by §301.654, the Executive Director shall terminate proceedings under Subchapter N and dispose of the matter as a complaint under Subchapter J. The Occupations Code §301.656

states that the Executive Director shall report periodically to the Board on the corrective actions imposed under Subchapter N, including: (i) the number of corrective actions imposed; (ii) the types of violations for which corrective actions were imposed; and (iii) whether affected nurses accepted the corrective actions. The Occupations Code §301.657(a) states that, except to the extent provided by §301.657, a person's acceptance of a corrective action under Subchapter N does not constitute an admission of a violation but does constitute a plea of nolo contendere. The Occupations Code §301.657(b) provides that the Board may treat a person's acceptance of corrective action as an admission of a violation if the Board imposes a sanction on the person for a subsequent violation of Chapter 301 or a rule or order adopted under Chapter 301. The Occupations Code §301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (1) perform its duties and conduct proceedings before the Board; (2) regulate the practice of professional nursing and vocational nursing; (3) establish standards of professional conduct for license holders Chapter 301; and (4) determine whether an act constitutes the practice of professional nursing or vocational nursing.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 26, 2009.

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CHAPTER 213. PRACTICE AND PROCEDURE

22 TAC §§213.20, 213.29, 213.30

INTRODUCTION. The Texas Board of Nursing (Board) adopts amendments to §213.20, concerning Informal Proceedings and Alternate Dispute Resolution (ADR); §213.29, concerning Criteria and Procedure Regarding Intemperate Use and Lack of Fitness in Eligibility and Disciplinary Matters; and §213.30, concerning Declaratory Order of Eligibility for Licensure. The amendments to §213.20 are adopted without changes to the proposed text as published in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6255). Section 213.29 and §213.30 are adopted with changes. Section 213.33, concerning Factors Considered for Imposition of Penalties/Sanctions and/or Fines, is withdrawn.

REASONED JUSTIFICATION. The amendments to §§213.20, 213.29, and 213.30 are adopted under the Occupations Code §§301.452, 301.4521, and 301.151. The adopted amendments to §213.20 are necessary to clarify the applicability of the Occupations Code §301.4521. The adopted amendments to §213.29 and §213.30 are necessary for internal consistency and to correct grammatical errors. Section 213.33 is withdrawn. As a result, the provisions of §213.33 that were originally proposed for amendment are fully restored.

The Board formally proposed amendments to §§213.20, 213.29, 213.30, and 213.33 in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6255). A public hearing on the rule proposal was not requested. The Board received two written comments on the published proposal. The Board's Eligibility and Disciplinary Advisory Committee (Committee) also considered the proposal at its September 17, 2009, meeting. Based upon the comments received, the Board has made minor changes to §213.29 and §213.30 as adopted. Further, as a result of comments received, the Board has withdrawn §213.33 as proposed. However, none of the changes made to the proposed text materially alters issues raised in the proposal, introduces new subject matter, or affects persons other than those previously on notice.

The Occupations Code §301.4521, which was enacted by the 81st Legislature, Regular Session, effective June 19, 2009, authorizes the Board to (i) require an individual to submit to a physical or psychological evaluation if the Board has probable cause to believe that the individual is unable to practice nursing safely due to physical impairment, mental impairment, chemical dependency, or abuse of drugs or alcohol and (ii) request an individual to submit to a physical or psychological evaluation if the Board believes that the individual is unable to practice nursing safely for a reason other than physical impairment, mental impairment, chemical dependency, or abuse of drugs or alcohol. Section 301.4521 also requires the Board to adopt (i) guidelines for requiring or requesting an individual to submit to an evaluation and (ii) rules regarding the qualifications for a licensed practitioner to conduct an evaluation.

The amendments to §213.33 were proposed pursuant to §301.4521. The proposed amendments specified circumstances under which an evaluation under §301.4521 would be required and/or requested by the Board; prescribed the credentials that an evaluator must possess in order to conduct an evaluation under §301.4521; and prescribed the requirements that an evaluation must meet under §301.4521. In response to the Board's proposal, commenters stated that the proposed amendments should better reflect that §301.4521 addresses evaluations required by the Board and evaluations requested by the Board differently. Commenters also questioned the necessity of testing for professional character and veracity as part of an evaluation related to physical impairment, mental impairment, or chemical dependency or drug abuse. Commenters also recommended that the Board consider approving additional types of health care providers, such as nurse practitioners, to conduct physical or psychological evaluations under §301.4521.

Although the Board does not agree with all of the comments received, the Board has determined that it should further review the comments before adopting the amendments to §213.33 as proposed. The Board has also determined that additional substantive amendments to §213.33, which were not originally proposed, may now be necessary. Further, for purposes of clarity and consistency, the Board has determined that the proposed amendments to §213.33 should be addressed in the same rule proposal. As such, the Board has determined that it should address the amendments to §213.33 through a separate rulemaking process. Therefore, the Board is withdrawing §213.33 as proposed. As a result, each provision in §213.33 that was originally proposed for amendment is fully restored.

Further, as a result of the restoration of the provisions in §213.33, the Board has determined that it is necessary to make minor changes to §213.29(c)(1) and §213.30(b)(3) as adopted. The title of §213.33 was originally proposed for amendment.

Proposed §213.29(c)(1) and §213.30(b)(3) both contained references to the proposed amended title of §213.33. However, the proposed amended title of §213.33 has been restored. As such, in order to maintain consistency among its rules, the Board has changed §213.29(c)(1) and §213.30(b)(3) as adopted to reference the restored title of §213.33.

Remaining Adopted Amendments

The adopted amendments to §213.20 are necessary to clarify that a mental or physical evaluation requested under adopted §213.20 is not subject to the provisions of the Occupations Code §301.4521. A physical or mental evaluation that is requested under adopted §213.20 is not requested by the Board for the resolution of a disciplinary matter. Rather, a physical or mental evaluation may be requested under adopted §213.20 by the peer assistance program in which an individual is participating in order to properly evaluate the individual's impairment level, and to plan, implement, and monitor the individual's rehabilitation and potential return to nursing practice. Decisions regarding whether an evaluation is necessary in a particular case is strictly within the purview of the peer assistance program in which the individual is participating. As such, the provisions of §301.4521 do not apply to such evaluations. The language of §213.20 may have been unclear in this regard, as it stated that the Executive Director of the Board or the peer assistance program could determine whether an individual should undergo a physical or mental evaluation under §213.20. In order to clarify this issue, the adopted amendments to §213.20 provide that only the peer assistance program may determine when an evaluation is required under adopted §213.20. The remaining adopted amendments to §213.20 are necessary to update an outdated reference to the 'Board of Nurse Examiners' and to correct a grammatical error.

The adopted amendments to §213.29 and §213.30 are necessary for consistency with §213.33. Adopted §213.29 requires an individual to obtain an evaluation in any matter before the Board that involves an allegation of chemical dependency or misuse or abuse of drugs of alcohol. Further, adopted §213.29 requires the evaluation to meet the criteria of §213.33. Adopted §213.30 requires a person who is potentially ineligible for licensure due to mental illness or chemical dependency, including alcohol, to submit an evaluation that meets the criteria of §213.33 to the Board. Section 213.33(e) and (f) prescribe the criteria that a fitness for practice evaluation must meet, as well as the credentials that an evaluator must possess in order to perform such an evaluation. Although adopted §213.29 and §213.30 address different scenarios in which the Board may require/request an individual to submit to an evaluation for fitness to practice, §213.33 prescribes the criteria that fitness for practice evaluations must meet, including the credentials that the evaluators must possess in order to conduct the evaluations. As such, it is necessary for adopted §213.29 and §213.30 to reference the criteria prescribed in §213.33 in order to ensure consistency among Board rules.

The adopted amendments to §213.29 are also necessary for consistency with the provisions of §301.4521. The adopted amendments to §213.29 make clear that an individual must pay for an evaluation under §213.29. This adopted requirement is consistent with the Occupations Code §301.4521(i), which states that an individual must pay the costs of an evaluation conducted under §301.4521. An evaluation under §213.29 is subject to the provisions of new §301.4521 because an evaluation under §213.29 will necessarily involve issues of chemical dependency and/or abuse of drugs or alcohol. Section 301.4521(b) provides that the Board may require an individual to submit to an evaluation if the Board has probable cause to believe that the individual is unable to practice nursing safely because of chemical dependency or abuse of drugs or alcohol.

HOW THE SECTIONS WILL FUNCTION. Adopted §213.20(h)(1)(C) provides that a nurse required to be reported under the Occupations Code §§301.401 - 301.409 may obtain informal disposition through referral to a peer assistance program, as specified in the Occupations Code §301.410, if the nurse makes a written contract with the Board of Nursing through its Executive Director promising to undergo and pay for such physical and mental evaluations as the peer assistance program determines to be reasonable and necessary to: (i) evaluate the nurse's impairment; (ii) plan, implement, and monitor the nurse's rehabilitation; and (iii) determine if, when, and under what conditions the nurse can safely return to practice. Adopted §213.29(c)(1) provides that if a registered or vocational nurse is reported to the Board for intemperate use, abuse of drugs or alcohol, or diagnosis of or treatment for chemical dependency, or if a person is unable to sign the certification in §213.29(b), that the following restriction and requirement applies: any matter before the Board that involves an allegation of chemical dependency, or misuse or abuse of drugs or alcohol, will require at a minimum that such person obtain for Board review an evaluation that meets the criteria of §213.33. Adopted §213.29(d) states that it shall be the responsibility of those persons subject to §213.29 to submit to and pay for an evaluation that meets the criteria of §213.33. Adopted §213.30(b)(3) provides that a person must submit a petition or application on forms provided by the Board, which includes, if the potential ineligibility is due to mental illness, evidence of an evaluation that meets the criteria of §213.33 and evidence of treatment. Adopted §213.30(b)(4) provides that a person must submit a petition or application on forms provided by the Board which includes, if the potential ineligibility is due to chemical dependency, including alcohol, evidence of an evaluation that meets the criteria of §213.33, treatment, after care, and support group attendance. The title of §213.33 reads as: *Factors Considered for Imposition of Penalties/Sanctions and/or Fines*. Section 213.33(a) specifies the factors that shall be considered by the Executive Director when determining whether to dispose of a disciplinary case by fine or by fine and stipulation and the amount of such fine. Further, these factors must be considered by the State Office of Administrative Hearings (SOAH) when recommending a sanction and the Board in determining the appropriate penalty/sanction in disciplinary cases. Section 213.33(e) provides that, when determining evidence of present fitness to practice, the Executive Director may require an evaluation by a psychologist or psychiatrist who is licensed by the Texas State Board of Examiners of Psychologists or the Texas Medical Board, respectively. Further, §213.33(e) provides that the evaluator must be familiar with the duties appropriate to the nursing profession. Section 213.33(e) also states that the evaluation must be conducted pursuant to professionally recognized standards and methods and must include the utilization of objective tests and instruments, which at a minimum, are designed to test the psychological stability and veracity of the applicant or licensee. Section 213.33(e) also provides that the applicant or licensee subject to evaluation shall sign a release allowing the evaluator to review the file compiled by the Board staff and a release that permits the evaluator to release the evaluation to the Board. Section 213.33(e) also states that the applicant or licensee should be provided a copy of the evaluation upon completion by the

evaluator; and, if not, the Board will provide the individual a copy. Section 213.33(f)(1) provides that, when determining evidence of present fitness to practice by a licensee or applicant for licensure, the Board or Executive Director may request an individual risk assessment conducted by a Board-approved forensic psychologist or psychiatrist who: (i) evaluates the criminal history of the person; (ii) seeks to predict the likelihood that the person will engage in criminal activity that may result in the person receiving a second or subsequent reportable adjudication or conviction; and the continuing danger, if any, that the person poses to the community; (iii) is familiar with the duties appropriate to the nursing profession; (iv) conducts the evaluation pursuant to professionally recognized standards and methods; and (v) utilizes objective tests and instruments that, at a minimum, are designed to test the psychological stability, fitness to practice, professional character, and/or veracity of the nurse applicant or licensee. Section 213.33(f)(2) provides that the applicant or licensee shall sign a release allowing the evaluator to review the file compiled by Board staff and a release that permits the evaluator to release the evaluation to the Board. Section 213.33(f)(3) provides that the applicant or licensee should be provided a copy of the evaluation upon completion by the evaluator; and, if not, the Board will provide the individual a copy. Section 213.33(g) provides that, in accordance with the provisions of the Occupations Code and the Nursing Practice Act (NPA), and in keeping with the obligation to protect the consumer of nursing services from the unsafe, incompetent or unprofessional nurse, the Board has adopted recommended guidelines for disciplinary orders and conditions of probation for violations of the NPA. Further, §213.33(g) states that the purpose of these guidelines is to give notice to licensees of the range of penalties which will normally be imposed for violations of the provisions in the Occupations Code Chapter 301 Subchapter J. Section 213.33(g) also provides that these disciplinary guidelines are based upon a single count violation of each provision listed. Section 213.33(g) provides that multiple violations of the same provision or rule, or other unrelated violations included in the administrative complaint, will be grounds for an enhancement of penalties subject to §301.4531(c)(1) and (2) of the NPA. Section 213.33(g) also provides that all penalties at the upper range of the sanctions set forth in the guidelines, such as suspension, revocation, or surrender, include lesser penalties, i.e., fine, remedial education, or probation, which may also be included in the final penalty at the Board's discretion. Section 213.33(g)(2) provides that the Board may, upon the finding of a violation, enter an order imposing one or more of the following disciplinary actions under the authority of §301.453(a) and (b) of the NPA: (i) denial of the person's application for a license, license renewal, or temporary permit; (ii) approval of the person's application for a license, license renewal, reinstatement of a revoked, suspended, or surrendered license, or temporary permit; (iii) setting reasonable probationary stipulations as a condition of the issuance, reinstatement, or renewal of the license or temporary permit, including: (A) submitting to an evaluation as outlined in §213.33(e); and (B) abstaining from the unauthorized use of drugs and alcohol to be verified by random drug testing; (iv) determining, in accordance with §301.468 of the NPA, that an order denying a license application, license renewal, or temporary permit be probated; (v) issuance of a Warning, which shall include reasonable probationary stipulations which may include abstaining from the unauthorized use of drugs and alcohol to be verified by random drug testing; (vi) issuance of a Reprimand, which shall include reasonable probationary stipulations which may include abstaining from the unauthorized use of drugs and alcohol to be verified by random drug testing; and (vii) suspension of the person's license, which may be: (A) enforced and active for a specific period; or (B) probated with reasonable probationary stipulations as a condition for lifting or staying the order of suspension, including submitting to an evaluation as outlined in §213.33(e) and abstaining from the unauthorized use of drugs and alcohol to be verified by random drug testing.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

§213.33(e) and (f)

Comment: A commenter who represents an organization states that the Occupations Code §301.4521(b) - (e) specifically applies to evaluations the Board is authorized to require, and §301.4521(f) - (g) applies to evaluations the Board is authorized to request. The commenter further states that §213.33(e) governs evaluations the Board is authorized to require and §213.33(f) governs evaluations the Board is authorized to request. The commenter states that the proposed rules state in §213.33(f)(4): 'The provisions of the Occupations Code §301.4521 apply to an evaluation requested under this subsection.' The commenter states that there is no corresponding provision in proposed rule §213.33(e). The commenter requests that the proposed sections be amended to reflect that §301.4521 addresses required and requested evaluations differently. The commenter requests that the proposed rules be amended to include specific reference to §301.4521(f) - (g) in proposed §213.33(f)(4) and §301.4521(b) - (e) in proposed §213.33(e).

The commenter also states that his organization does not believe that it is appropriate to require testing of professional character and veracity as part of an evaluation required due to possible physical impairment, mental impairment, or chemical dependency or abuse. The commenter states that the testing of these two items is more appropriate to evaluations the Board is authorized to request under §301.4521(f). The commenter states that an evaluation of physical impairment would normally not be designed to test professional character or veracity. The commenter further states that even psychological stability may not be tested. The commenter requests that the proposed rules be amended to provide that an evaluation must include the utilization of objective tests and instruments which at a minimum are designed to test the fitness to practice and, when appropriate, the psychological stability of the person subject to evaluation.

Another commenter representing an organization recommends that the Board add advanced practice registered nurses to the types of health care providers that the Board may approve to provide a physical or psychological evaluation of a nurse's competency to safely practice. The commenter states that advanced practice registered nurses are practicing in various specialties that might qualify them to provide the type of evaluations required by the Board. Further, the commenter states that advanced practice registered nurses are more likely than any other type of health care providers to be aware of the physical and psychological demands on a nurse, and, therefore, may be uniquely qualified to evaluate a nurse's fitness to practice. Further, the commenter states that there seems to be an error in the use of the term 'osteopathic' in the proposed rule and suggests that it might be clearer to substitute the term 'doctor of osteopathy' in the rule text.

Agency Response: While the Board does not agree with all of the comments received, the Board has determined that it should

further review and consider the comments before adopting the amendments to §213.33 as proposed. The Board has also determined that additional substantive amendments to §213.33, which were not proposed in this rule proposal, may now be necessary. As such, the Board has determined that it should address any new requirements regarding physical and psychological evaluations under the Occupations Code §301.4521 through a separate rulemaking process. Further, for purposes of clarity and consistency, the Board has determined that it should address all other proposed amendments to §213.33 in the same rule proposal. Thus, the Board will publish a notice of proposal with a 30-day comment period before proceeding further with any proposed amendments to §213.33. Therefore, the Board is withdrawing §213.33 as proposed, and the provisions of §213.33 that were originally proposed for amendment are fully restored.

The Eligibility and Disciplinary Advisory Committee

The Eligibility and Disciplinary Advisory Committee (Committee) convened on September 17, 2009 and considered the proposed amendments to 22 TAC §213.20, pertaining to Informal Proceedings and Alternate Dispute Resolution (ADR); §213.29, pertaining to Criteria and Procedure Regarding Intemperate Use and Lack of Fitness in Eligibility and Disciplinary Matters; §213.30, pertaining to Declaratory Order of Eligibility for Licensure; and §213.33, pertaining to Factors Considered for Imposition of Penalties/Sanctions and/or Fines. Certain members of the Committee expressed concern that the proposed rules were too restrictive and suggested that additional health care providers be considered for performing physical and psychological evaluations. One member of the Committee requested that the Board consider whether nurse practitioners could provide evaluations in certain situations where the practitioner's specialty was appropriate and relevant. One member of the Committee also pointed out that the use of 'osteopathic' was probably an incorrect usage of the term. Most of the members of the Committee agreed that it should be made clear that an evaluator must have the appropriate credentials, experience, and expertise to conduct an evaluation.

The Board declines to make any of the Committee's suggested modifications to the proposed rule at this time for the reasons set forth previously in this Rule Adoption.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For: None.

Against: None.

For, with changes: None.

Neither for nor against, with changes: The Texas Nurses Association; The Coalition for Nurses in Advanced Practice.

STATUTORY AUTHORITY. The amendments are adopted under the Occupations Code §§301.452, 301.4521, and 301.151. The Occupations Code §301.452(a) defines intemperate use to include practicing nursing or being on duty or on call while under the influence of alcohol or drugs. The Occupations Code §301.452(b) provides that a person is subject to denial of a license or to disciplinary action under Subchapter J for: (i) a violation of Chapter 301, a rule or regulation not inconsistent with Chapter 301, or an order issued under Chapter 301; (ii) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing; (iii) a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude; (iv) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude; (v) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered; (vi) impersonating or acting as a proxy for another person in the licensing examination required under §301.253 or §301.255; (vii) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing; (viii) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction; (ix) intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient; (x) unprofessional or dishonorable conduct that, in the Board's opinion, is likely to deceive, defraud, or injure a patient or the public; (xi) adjudication of mental incompetency; (xii) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or (xiii) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to risk of harm. The Occupations Code §301.452(c) provides that the Board may refuse to admit a person to a licensing examination for a ground described under §301.452(b). The Occupations Code §301.452(d) requires the Board, by rule, to establish guidelines to ensure that any arrest information, in particular information on arrests in which criminal action was not proven or charges were not filed or adjudicated, that is received by the Board under §301.452 is used consistently, fairly, and only to the extent the underlying conduct relates to the practice of nursing. The Occupations Code §301.4521(a) defines the term *applicant* as a petitioner for a declaratory order of eligibility for a license or an applicant for an initial license or renewal of a license and the term *evaluation* as a physical or psychological evaluation conducted to determine a person's fitness to practice nursing. The Occupations Code §301.4521(b) provides that the Board may require a nurse or applicant to submit to an evaluation only if the Board has probable cause to believe that the nurse or applicant is unable to practice nursing with reasonable skill and safety to patients because of: (i) physical impairment; (ii) mental impairment; or (iii) chemical dependency or abuse of drugs or alcohol. The Occupations Code §301.4521(c) provides that a demand for an evaluation under §301.4521(b) must be in writing and state: (i) the reasons probable cause exists to require the evaluation; and (ii) that refusal by the nurse or applicant to submit to the evaluation will result in an administrative hearing to be held to make a final determination of whether probable cause for the evaluation exists. The Occupations Code §301.4521(d) states that, if the nurse or applicant refuses to submit to the evaluation, the Board shall schedule a hearing on the issue of probable cause to be conducted by the State Office of Administrative Hearings. The nurse or applicant must be notified of the hearing by personal service or certified mail. The hearing is limited to the issue of whether the Board had probable cause to require an evaluation. The nurse or applicant may present testimony and other evidence at the hearing to show why the nurse or applicant should not be required to submit to the evaluation. The Board has the burden of proving that probable cause exists. At the conclusion of the hearing, the hearing officer shall enter an order requiring the nurse or applicant to submit to the evaluation or an order rescinding the Board's demand for an evaluation. The order may not be vacated or modified under the Government Code §2001.058. The Occupations Code §301.4521(e) states that, if a nurse or applicant refuses to submit to an evaluation after an

order requiring the evaluation is entered under §301.4521(d), the Board may: (i) refuse to issue or renew a license; (ii) suspend a license; or (iii) issue an order limiting the license. The Occupations Code §301.452(f) provides that the Board may request a nurse or applicant to consent to an evaluation by a practitioner approved by the Board for a reason other than a reason listed in §301.4521(b). A request for an evaluation under §301.4521(f) must be in writing and state: (i) the reasons for the request; (ii) the type of evaluation requested; (iii) how the Board may use the evaluation; (iv) that the nurse or applicant may refuse to submit to an evaluation; and (v) the procedures for submitting an evaluation as evidence in any hearing regarding the issuance or renewal of the nurse's or applicant's license. The Occupations Code §301.4521(g) states that, if a nurse or applicant refuses to consent to an evaluation under §301.4521(f), the nurse or applicant may not introduce an evaluation into evidence at a hearing to determine the nurse's or applicant's right to be issued or retain a nursing license unless the nurse or applicant: (i) not later than the 30th day before the date of the hearing, notifies the Board that an evaluation will be introduced into evidence at the hearing; (ii) provides the Board the results of that evaluation; (iii) informs the Board of any other evaluations by any other practitioners; and (iv) consents to an evaluation by a practitioner that meets Board standards established under §301.4521(h). The Occupations Code §301.4521(h) provides that the Board shall establish by rule the qualifications for a licensed practitioner to conduct an evaluation under §301.4521. The Board shall maintain a list of qualified practitioners. The Board may solicit qualified practitioners located throughout the state to be on the list. The Occupations Code §301.4521(i) states that a nurse or applicant shall pay the costs of an evaluation conducted under §301.4521. The Occupations Code §301.4521(j) provides that the results of an evaluation under §301.4521 are: (i) confidential and not subject to disclosure under the Government Code Chapter 552; (ii) not subject to disclosure by discovery, subpoena, or other means of legal compulsion for release to anyone, except that the results may be: (A) introduced as evidence in a proceeding before the Board or a hearing conducted by the State Office of Administrative Hearings under Chapter 301; or (B) included in the findings of fact and conclusions of law in a final Board order. The Occupations Code §301.4521(k) provides that, if the Board determines there is insufficient evidence to bring action against a person based on the results of any evaluation under this section, the evaluation must be expunged from the Board's records. The Occupations Code §301.4521(l) requires the Board to adopt guidelines for requiring or requesting a nurse or applicant to submit to an evaluation under §301.4521. The Occupations Code §301.4521(m) states that the authority granted to the Board under §301.4521 is in addition to the Board's authority to make licensing decisions under this chapter. The Occupations Code §301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (1) perform its duties and conduct proceedings before the Board; (2) regulate the practice of professional nursing and vocational nursing; (3) establish standards of professional conduct for license holders Chapter 301; and (4) determine whether an act constitutes the practice of professional nursing or vocational nursing.

§213.29. Criteria and Procedure Regarding Intemperate Use and Lack of Fitness in Eligibility and Disciplinary Matters.

(a) A person desiring to obtain or retain a license to practice professional or vocational nursing shall provide evidence of current sobriety and fitness consistent with this rule.

(b) Such person shall provide a sworn certificate to the Board stating that he/she has read and understands the requirements for licensure as a registered or vocational nurse and that he/she has not:

(1) within the past five years, become addicted to or treated for the use of alcohol or any other drug; or

(2) within the past five years, been diagnosed with, treated or hospitalized for schizophrenia and/or other psychotic disorders, bipolar disorder, paranoid personality disorder, antisocial personality disorder or borderline personality disorder.

(c) If a registered or vocational nurse is reported to the Board for intemperate use, abuse of drugs or alcohol, or diagnosis of or treatment for chemical dependency; or if a person is unable to sign the certification in subsection (b) of this section, the following restrictions and requirements apply:

(1) Any matter before the Board that involves an allegation of chemical dependency, or misuse or abuse of drugs or alcohol, will require at a minimum that such person obtain for Board review an evaluation that meets the criteria of §213.33 of this chapter (relating to Factors Considered for Imposition of Penalties/Sanctions and/or Fines);

(2) Those persons who have become addicted to or treated for alcohol or chemical dependency will not be eligible to obtain or retain a license to practice as a nurse unless such person can demonstrate sobriety and abstinence for the preceding twelve consecutive months through verifiable and reliable evidence, or can establish eligibility to participate in a peer assistance program created pursuant to Chapter 467 of the Health and Safety Code;

(3) Those persons who have become addicted to or treated for alcohol or chemical dependency will not be eligible to obtain or retain an unencumbered license to practice nursing until the individual has attained a five-year term of sobriety and abstinence or until such person has successfully completed participation in a board-approved peer assistance program created pursuant to Chapter 467 of the Health and Safety Code.

(4) Those persons who have been diagnosed with, treated, or hospitalized for the disorders mentioned in subsection (b) of this section shall execute an authorization for release of medical, psychiatric, and treatment records.

(d) It shall be the responsibility of those persons subject to this rule to submit to and pay for an evaluation that meets the criteria of §213.33 of this chapter.

(e) Prior intemperate use, mental illness, or diminished mental capacity is relevant only so far as it may indicate current intemperate use or lack of fitness.

(f) With respect to chemical dependency in eligibility and disciplinary matters, the executive director is authorized to:

(1) review submissions from a movant, materials and information gathered or prepared by staff, and identify any deficiencies in file information necessary to determine the movant's request;

(2) close any eligibility file in which the movant has failed to respond to a request for information or to a proposal for denial of eligibility within 60 days thereof;

(3) approve eligibility, enter eligibility orders and approve renewals, without Board ratification, when the evidence is clearly insufficient to prove a ground for denial of licensure; and

(4) propose conditional orders in eligibility, disciplinary and renewal matters for individuals who have experienced chemical/alcohol dependency within the past five years provided:

(A) the individual presents reliable and verifiable evidence of having functioned in a sober/abstinent manner for the previous twelve consecutive months; and

(B) licensure limitations/stipulations and/or peer assistance program participation can be implemented which will ensure that patients and the public are protected until the individual has attained a five-year term of sobriety/abstinence.

(g) With respect to mental illness or diminished mental capacity in eligibility, disciplinary, and renewal matters, the executive director is authorized to propose conditional orders for individuals who have experienced mental illness or diminished mental capacity within the past five years provided:

(1) the individual presents reliable and verifiable evidence of having functioned in a manner consistent with the behaviors required of nurses under the Nursing Practice Act and Board rules for at least the previous twelve consecutive months; and

(2) licensure limitations/stipulations and/or peer assistance program participation can be implemented which will ensure that patients and the public are protected until the individual has attained a five-year term of controlled behavior and consistent compliance with the requirements of the Nursing Practice Act and Board rules.

(h) In renewal matters involving chemical dependency use, mental illness, or diminished mental capacity, the executive director shall consider the following information from the preceding renewal period:

(1) evidence of the licensee's safe practice;

(2) compliance with the NPA and Board rules; and

(3) written verification of compliance with any treatment.

(i) Upon receipt of items (h)(1) - (3) of this section, the executive director may renew the license.

(j) The following disciplinary and eligibility sanction policies and guidelines shall be used by the Executive Director, the State Office of Administrative Hearings (SOAH), or the Board in evaluating the appropriate licensure determination or sanction in eligibility and disciplinary matters:

(1) Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder and published on February 22, 2008 in the *Texas Register* (33 TexReg 1651) and available on the Board's web site at http://www.bon.state.tx.us/disciplinaryaction/dsp.html.

(2) Disciplinary Guidelines for Criminal Conduct approved by the Board and published on March 9, 2007 in the *Texas Register* (32 TexReg 1409) and available on the Board's website http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html.

§213.30. Declaratory Order of Eligibility for Licensure.

(a) A person enrolled or planning to enroll in an educational nursing program that prepares a person for an initial license as a registered or vocational nurse or an applicant who seeks licensure by endorsement pursuant to §217.5 of this title (relating to Temporary License and Endorsement) who has reason to believe that he or she may be ineligible for licensure, may petition the Board for a declaratory order or apply for a license by endorsement as to his or her eligibility.

(b) The person must submit a petition or application on forms provided by the Board which includes:

(1) a statement by the petitioner or applicant indicating the reason(s) and basis of potential ineligibility;

(2) if the potential ineligibility is due to criminal conduct and/or conviction, any court documents including, but not limited to, indictments, orders of deferred adjudication, judgments, probation records and evidence of completion of probation, if applicable;

(3) if the potential ineligibility is due to mental illness, evidence of an evaluation that meets the criteria of §213.33 of this chapter (relating to Factors Considered for Imposition of Penalties/Sanctions and/or Fines) and evidence of treatment;

(4) if the potential ineligibility is due to chemical dependency including alcohol, evidence of an evaluation that meets the criteria of §213.33 of this chapter and treatment, after care and support group attendance; and

(5) the required fee which is not refundable.

(c) An investigation of the petition/application and the petitioner's/applicant's eligibility shall be conducted.

(d) The petitioner/applicant or the Board may amend the petition/application to include additional grounds for potential ineligibility at any time before a final determination is made.

(e) If an applicant under §217.5 of this title has been licensed to practice professional or vocational nursing in any jurisdiction and has been disciplined, or allowed to surrender in lieu of discipline, in that jurisdiction, the following provisions shall govern the eligibility of the applicant under §213.27 of this title (relating to Good Professional Character).

(1) A certified copy of the order or judgment of discipline from the jurisdiction is prima facie evidence of the matters contained in such order or judgment, and a final adjudication in the other jurisdiction that the applicant has committed professional misconduct is conclusive of the professional misconduct alleged in such order or judgment.

(2) An applicant disciplined for professional misconduct in the course of nursing in any jurisdiction or an applicant who resigned in lieu of disciplinary action is deemed to not have present good professional character under §213.27 of this title and is therefore ineligible to file an application under §217.5 of this title during the period of such discipline imposed by such jurisdiction, and in the case of revocation or surrender in lieu of disciplinary action, until the applicant has filed an application for reinstatement in the disciplining jurisdiction and obtained a final determination on that application.

(f) If a petitioner's/applicant's potential ineligibility is due to criminal conduct and/or conviction, the following provisions shall govern the eligibility of the applicant under §213.28 of this title (relating to Licensure of Persons with Criminal Convictions):

(1) The record of conviction or order of deferred adjudication is conclusive evidence of guilt.

(2) Upon proof that a felony conviction or felony order of probation with or without adjudication of guilt has been set aside or reversed, the petitioner or applicant shall be entitled to a new hearing before the Board for the purpose of determining whether, absent the record of conclusive evidence of guilt, the petitioner or applicant possesses present good professional character and fitness.

(g) If the executive director proposes to find the petitioner or applicant ineligible for licensure, the petitioner or applicant may obtain a hearing before the State Office of Administrative Hearings. The Executive Director shall have discretion to set a hearing and give notice of the hearing to the petitioner or applicant. The hearing shall be conducted in accordance with §213.22 of this title (relating to Formal

Proceedings) and the rules of SOAH. When in conflict, SOAH's rules of procedure will prevail. The decision of the Board shall be rendered in accordance with §213.23 of this title (relating to Decision of the Board).

(h) A final Board order is issued after an appeal results in a Proposal for Decision from SOAH. The Board's final order must set out each basis for potential ineligibility and the Board's determination as to eligibility. In the absence of new evidence not disclosed by the petitioner or not reasonably available to the Board at the time the order is issued, the Board's ruling determines the person's eligibility with respect to the grounds for potential ineligibility as set out in the order. An individual whose petition is denied by final order of the Board may not file another petition or application for licensure until after the expiration of three years from the date of the Board's order denying the petition or application for licensure. If the applicant or petitioner does not appeal or request a formal hearing at SOAH after a letter proposal to deny eligibility made by the E&D Committee or the executive director, the applicant or petitioner may re-petition after the expiration of one year from the date of the proposal to deny eligibility, in accordance with this rule and §301.257, Texas Occupations Code.

(i) The following disciplinary and eligibility sanction policies and guidelines shall be used by the Executive Director, the State Office of Administrative Hearings (SOAH), when recommending a declaratory order of eligibility; and the Board in determining the appropriate declaratory order in eligibility matters:

(1) Disciplinary Sanctions for Fraud, Theft and Deception approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1646) and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html.

(2) Disciplinary Sanctions for Lying and Falsification approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1647) and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html.

(3) Disciplinary Sanctions for Sexual Misconduct approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1649) and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html.

(4) Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder and published on February 22, 2008 in the *Texas Register* (33 TexReg 1651) and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html.

(5) Disciplinary Guidelines for Criminal Conduct approved by the Board and published on March 9, 2007 in the *Texas Register* at (32 TexReg 1409) and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 26, 2009.

TRD-200904843
Jena Abel
Assistant General Counsel
Texas Board of Nursing
Effective date: November 15, 2009
Proposal publication date: September 11, 2009
For further information, please call: (512) 305-6822

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22 TAC §213.23

INTRODUCTION. The Texas Board of Nursing (Board) adopts amendments to §213.23, concerning *Decision of the Board.* The amendments are adopted with changes to the proposed text published in the August 28, 2009, issue of the *Texas Register* (34 TexReg 5855) to correct minor typographical errors. The changes correct references from the "board" to the "Board" in §213.23(d) as adopted.

REASONED JUSTIFICATION. The amendments to §213.23 are adopted under the Occupations Code §301.459(a) and §301.151 and the Government Code §2001.004 and §2001.062(a) and (b) and are necessary to implement the Board's amended policy regarding the appearance of individuals before the Board. Specifically, the adopted amendments establish the specific procedures and requirements that must be met before an individual will be permitted to appear before the Board to make an oral presentation regarding a Proposal for Decision (PFD).

Historically, the Board has permitted an individual affected by a PFD to appear before it to make an oral presentation prior to the Board's final deliberation and decision. Although individuals are requested to submit their arguments and briefing to the Board in advance of the Board meeting in which the PFD is scheduled to be considered, the majority of individuals ignore this request and, instead, opt to orally address the Board during its open meeting. The Board's policy of permitting individuals to appear before it to make oral presentations regarding PFDs was intended to provide individuals with an additional opportunity to be heard, and to maintain a sense of fairness in Board decisions. However, over time, it has become clear that most individuals inappropriately utilize the oral forum to present information to the Board that was not considered by the ALJ. As a result, the Board re-considered its policy of permitting individuals to appear before it at the April, 2009, Board meeting, and voted to amend its policy. The amended policy permits an individual to appear before the Board to make an oral presentation regarding a PFD provided that the individual provides written exceptions or briefs to the Board in advance of the Board meeting where the PFD will be considered.

The Government Code §2001.062(a)(2) requires a party who may be adversely affected by an agency decision to be given an opportunity to file exceptions and present briefs to the state agency officials who will render the final decision. Additionally, if exceptions or briefs are filed by a party, §2001.062(b) requires that the other party be given an opportunity to file replies to the exceptions or briefs. Neither the Government Code Chapter 2001 nor the Occupations Code Chapter 301, however, requires the Board to provide an individual with an additional opportunity to appear before it to make an oral presentation regarding a PFD once the individual has been afforded a hearing at the State Office of Administrative Hearings (SOAH). The Board recognizes that an individual who appears before it may present information to the Board that was not presented to the ALJ. The Board has determined that the receipt and consideration of such information is problematic and should be controlled. The adopted amendments are designed to minimize this risk by requiring an individual to pre-file his or her written exceptions and briefs with the Board. Further, the adopted requirements are consistent with the intent of the Government Code §2001.062, which contemplates the presentation of legal argument through the submis-

sion of written exceptions and briefs and written responses to exceptions and briefs.

In accordance with the requirements of the Government Code §2001.062, the adopted amendments to §213.23(d) provide parties an opportunity to file (i) written exceptions and briefs with the Board concerning a PFD; and (ii) responses to written exceptions and briefs. Under this adopted amendment, an individual is entitled to file written exceptions and briefs regarding a PFD and responses to written exceptions and briefs regarding a PFD with the Board. If the individual intends to appear before the Board to make an oral presentation regarding the PFD, the adopted amendments to §213.23(d) require the individual to first file written exceptions or briefs with the Board at least 21 days prior to the date of the Board meeting in which the Board will consider the PFD. If the individual fails to meet this requirement by either not filing written exceptions or briefs or by filing written exceptions or briefs untimely, the individual will not be permitted to appear before the Board to make an oral presentation. Further, under the adopted amendments, an individual will not be permitted to make an oral presentation to the Board concerning a proposed modification to a PFD unless the individual has filed a written response to the proposed modification at least 10 days prior to the date of the Board meeting where the Board will consider the PFD. Should the individual fail to meet this requirement by either not filing a written response to the proposed modification to the PFD or by filing a written response to the proposed modification untimely, the individual will not be permitted to appear before the Board to make an oral presentation.

The adopted amendment to §213.23(c) is necessary to clarify that a PFD may be acted upon by the Board or the Eligibility and Disciplinary Committee, pursuant to the requirements of adopted §213.23. The remaining adopted amendments are necessary to re-designate the subsections in §213.23.

HOW THE SECTIONS WILL FUNCTION. Adopted §213.23(c) provides that a PFD may be acted on by the Board or the Eligibility and Disciplinary Committee, in accordance with §213.23, after the expiration of 10 days after the filing of replies to exceptions to the PFD or upon the day following the day exceptions or replies to exceptions are due if no such exceptions or replies are filed. Adopted §213.23(d) provides that parties shall have an opportunity to file written exceptions and briefs with the Board concerning a PFD. Further, adopted §213.23(d) states that an opportunity shall be given to file a response to written exceptions and briefs. However, a Respondent shall not be permitted to make an oral presentation to the Board concerning a PFD unless the Respondent has first filed written exceptions or briefs with the Board at least 21 days prior to the date of the next regularly scheduled Board meeting where the Board will deliberate on the PFD. Finally, adopted §213.23(d) provides that a Respondent shall not be permitted to make an oral presentation to the Board concerning a proposed modification to a PFD unless the Respondent has first filed a written response to the proposed modification with the Board at least 10 days prior to the date of the regularly scheduled Board meeting where the Board will deliberate on the PFD. The remaining adopted amendments re-designate the subsections in §213.23.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

§213.23(d)

Comment: Three individual commenters expressed concern that the proposed rules do not apply equally to all parties. The commenters state that there is a possibility that evidence and testimony, which was not considered by the ALJ issuing the PFD, might be presented to the Board, not just by the Respondent, but by Board Staff. The commenters state that, in order to ensure a fair and balanced process, the proposed rules should not be limited to the Respondent, but should apply equally to all parties. The commenters further suggest changing all references in §213.23(d) from "Respondent" to "Party" so that the proposed requirements apply to both the Respondent and Board Staff.

Agency Response: The Board declines to make the suggested change. The Board is not required by the Government Code Chapter 2001 (Administrative Procedure Act) or the Occupations Code Chapter 301 to provide a Respondent with an opportunity to appear before it to make an oral presentation regarding a PFD once the individual has been afforded a hearing at SOAH. Nevertheless, out of a sense of fairness, the Board has determined that it is important to offer Respondents this additional opportunity to be heard, provided they present written material for Board consideration prior to the presentation.

While the Board believes that this opportunity should be preserved, the Board also recognizes the need to adopt requirements and procedures that will help maintain the integrity of its decisions. The adopted requirements are intended to minimize and reduce the risk of the introduction of new information and evidence not properly vetted during the evidentiary hearing before the ALJ.

The Board has determined that there is no need to impose the identical criteria of the adopted rule towards Board Staff at this time. The adopted amendments are intended to address the problematic issues the Board has experienced with Respondents when the Board has permitted an oral audience before it not otherwise permitted by the Administrative Procedure Act. The adopted amendments do not impose unfair, unreasonable, or overly burdensome requirements on Respondents seeking to appear before the Board. Rather, the adopted amendments provide Respondents with an additional opportunity to be heard, which is not required by law. Further, the Government Code Chapter 2001 currently provides adequate remedy for any error or abuse committed by Board Staff, which can be cured on appeal.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL. For: None. Against: An individual commenter. For, with changes: None. Neither for nor against, with changes: Two individual commenters.

STATUTORY AUTHORITY. The amendments are adopted under the Occupations Code §§301.459(a), 301.505(c), and 301.151 and the Government Code §2001.004 and §2001.062(a) and (b). The Occupations Code §301.459(a) requires the Board, by rule, to adopt procedures under the Government Code Chapter 2001 governing formal disposition of a contested case. The Occupations Code §301.505(c) requires the ALJ to make findings of fact and conclusions of law and promptly issue to the Board a PFD as to the occurrence of the violation and the amount of any proposed administrative penalty. The Occupations Code §301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (1) perform its duties and conduct proceedings before the Board; (2) regulate the practice of professional nursing and vocational nursing; (3) establish standards of professional conduct for license holders Chapter 301; and (4) determine whether an act constitutes the practice of professional nursing or vocational nursing. The Government Code §2001.004 states that, in addition to other requirements under law, a state agency shall: (1)

adopt rules of practice stating the nature and requirements of all available formal and informal procedures; (2) index, cross-index to statute, and make available for public inspection all rules and other written statements of policy or interpretations that are prepared, adopted, or used by the agency in discharging its functions; and (3) index, cross-index to statute, and make available for public inspection all final orders, decisions, and opinions. The Government Code §2001.062(a) provides that, in a contested case, if a majority of the state agency officials who are to render a final decision have not heard the case or read the record, the decision, if adverse to a party other than the agency itself, may not be made until: (1) a PFD is served on each party; and (2) an opportunity is given to each adversely affected party to file exceptions and present briefs to the officials who are to render the decision. Section 2001.062(b) states that, if a party files exceptions or presents briefs, an opportunity shall be given to each other party to file replies to the exceptions or briefs.

§213.23. Decision of the Board.

(a) Except as to those matters expressly delegated to the executive director for ratification, either the Board or the Eligibility and Disciplinary Committee, may make final decisions in all matters relating to the granting or denial of a license or permit, discipline, temporary suspension, or administrative and civil penalties.

(b) Any party of record who is adversely affected by the proposal for decision of the judge shall have the opportunity to file exceptions and a brief to the proposal for decision within 15 days after the date of service of the proposal for decision. A reply to the exceptions may be filed by the other party within 15 days of the filing of the exceptions. Exceptions and replies shall be filed with the judge with copies served on the opposing party. The proposal for decision may be amended by the judge pursuant to the exceptions, replies, or briefs submitted by the parties without again being served on the parties.

(c) The proposal for decision may be acted on by the Board or the Eligibility and Disciplinary Committee, in accordance with this section, after the expiration of 10 days after the filing of replies to exceptions to the proposal for decision or upon the day following the day exceptions or replies to exceptions are due if no such exceptions or replies are filed.

(d) Parties shall have an opportunity to file written exceptions and briefs with the Board concerning a proposal for decision. An opportunity shall be given to file a response to written exceptions and briefs. However, a Respondent shall not be permitted to make an oral presentation to the Board concerning a proposal for decision unless the Respondent has first filed written exceptions or briefs with the Board at least 21 days prior to the date of the next regularly scheduled Board meeting where the Board will deliberate on the proposal for decision. A Respondent shall not be permitted to make an oral presentation to the Board concerning a proposed modification to a proposal for decision unless the Respondent has first filed a written response to the proposed modification with the Board at least 10 days prior to the date of the regularly scheduled Board meeting where the Board will deliberate on the proposal for decision.

(e) It is the policy of the Board to change a finding of fact or conclusion of law in a proposal for decision or to vacate or modify the proposed order of a judge when, the Board determines:

(1) that the judge did not properly apply or interpret applicable law, agency rules, written policies provided by staff or prior administrative decisions;

(2) that a prior administrative decision on which the judge relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed.

(f) If the Board modifies, amends, or changes the recommended order of the judge, an order shall be prepared reflecting the Board's changes as stated in the record of the meeting and stating the specific reason and legal basis for the changes made according to subsection (e) of this section.

(g) An order of the Board shall be in writing and may be signed by the executive director on behalf of the Board.

(h) A copy of the order shall be mailed to all parties and to the party(s last known employer as a nurse.

(i) The decision of the Board is immediate, final, and appealable upon the signing of the written order by the executive director on behalf of the Board where:

(1) the Board finds and states in the order that an imminent peril to the public health, safety, and welfare requires immediate effect of the order; and

(2) the order states it is final and effective on the date rendered.

(j) A motion for rehearing shall not be a prerequisite for appeal of the decision where the order of the Board contains the finding set forth in subsection (i) of this section.

(k) Motions for rehearing are controlled by Texas Government Code §2001.145.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 26, 2009.

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Assistant General Counsel
Texas Board of Nursing
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22 TAC §213.32

INTRODUCTION. The Texas Board of Nursing (Board) adopts amendments and new paragraphs to §213.32, concerning *Schedule of Administrative Fine(s).* New §213.32(2) is adopted with changes to the proposed text as published in the September 4, 2009, issue of the *Texas Register* (34 TexReg 6078). New §213.32(1), (3), and (4), and amended §213.32(5), (6), and (7) are adopted without changes to the proposed text.

REASONED JUSTIFICATION. New §213.32(1) - (4) is adopted under the Occupations Code §§301.651 - 301.657, which authorizes the use of corrective actions, and is necessary to implement Senate Bill (SB) 1415, enacted by the 81st Legislature, Regular Session, effective September 1, 2009, which adds new Subchapter N to the Occupations Code Chapter 301. Amended §213.32(5) - (7) is adopted under the Occupations Code §§301.453(a), 301.4531, 301.501, and 301.502 and is necessary to revise and clarify the disciplinary sanctions and

the amount of administrative fines that may be imposed upon an individual in a disciplinary action.

The Board adopted emergency amendments to §213.32 on September 1, 2009. Pursuant to the Government Code §2001.034, the Board is authorized to adopt an emergency rule without prior notice or hearing if a requirement of state or federal law requires the adoption of a rule on fewer than 30 days' notice. Further, an emergency rule adopted under the Government Code §2001.034 may not be effective for longer than 120 days and may be renewed once for no longer than 60 days. The adopted emergency amendments to §213.32 were published in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6199) and are scheduled to expire on December 29, 2009. The Board is adopting the instant amendments and new paragraphs to §213.32 to permanently replace the emergency amendments to §213.32 that were adopted on September 1, 2009.

The Board formally proposed the amendments and new paragraphs to §213.32 in the September 4, 2009, issue of the *Texas Register* (34 TexReg 6078). A public hearing on the rule proposal was not requested. The Board received one written comment on the published proposal. The Board's Eligibility and Disciplinary Advisory Committee (Committee) also considered the proposal at its September 17, 2009, meeting. Based upon the Committee's discussions and observations, the Board has changed some of the proposed language in the text of the rule as adopted. None of the changes made to the proposed text, however, materially alters issues raised in the proposal, introduces new subject matter, or affects persons other than those previously on notice.

The Board has made changes to §213.32(2) as adopted based upon the Committee's discussions and observations. Certain members of the Committee expressed concern that the proposed rules were too restrictive and suggested that the Executive Director be given more flexibility in determining which violations could be resolved through a corrective action. Further, one member of the Committee requested that the Board consider including an advanced practice registered nurse's failure to apply for prescriptive authority in a new role as a type of violation for which a corrective action could be imposed. In order to adequately protect the health, safety, and welfare of the public, the Board has determined that a corrective action should be reserved for violations that are minor, limited, and administrative in nature. The Board finds that an advanced practice registered nurse's failure to apply for prescriptive authority in a new role poses a low risk of harm to the public and could be appropriately resolved though a corrective action. As a result, the Board has revised §213.32(2) as adopted to allow for such consideration. Specifically, a new subparagraph has been added to §213.32(2) as adopted which authorizes the Board to impose a corrective action for the failure of an advanced practice registered nurse to register for prescriptive authority in an additional role and population focus area, where the advanced practice registered nurse otherwise meets all requirements for prescriptive authority as specified in 22 TAC Chapter 222 (relating to Advanced Practice Nurses With Prescriptive Authority).

The following paragraphs provide a brief summary, as well as an analysis, of the reasons for the adopted amendments and new paragraphs.

Corrective Action Proceedings

SB 1415 enacts a significant change to the Occupations Code Chapter 301 that affects the regulation of licensees and individuals subject to Chapter 301. SB 1415 adds new Subchapter N, §§301.651 - 301.657, to Chapter 301. These new sections authorize the Board to impose a corrective action on an individual who violates a provision of Chapter 301 or a rule or order adopted under Chapter 301. SB 1415 defines a corrective action as a non-disciplinary action consisting of a fine, remedial education, or any combination of a fine or remedial education. This is a particularly significant aspect of the new law. Disciplinary actions under the Occupations Code Subchapter J are reported by the Board to the public and to the Healthcare Integrity and Protection Data Bank (HIPDB), a national database created by the U.S. Department of Health and Human Services to combat fraud and abuse in health insurance and health care delivery. A corrective action under new Subchapter N, however, will not be reportable to the public or HIPDB. Further, SB 1415 makes a corrective action under new Subchapter N confidential by law and generally non-disclosable to the public. The Occupations Code §301.652(a)(3) provides that a corrective action is subject to disclosure only to the extent that a complaint is subject to disclosure under the Occupations Code §301.466. A complaint is confidential by law under §301.466(a) and is generally not subject to disclosure under the Government Code Chapter 552 or through discovery, subpoena, or other means of legal compulsion. While the Occupations Code §301.466(b) provides specific exceptions through which a complaint may be disclosed to a person besides the Board and its employees and agents, these exceptions are limited in scope. In the same way, a corrective action under SB 1415 will not be disclosed unless one of the specified exceptions in §301.466(b) applies. SB 1415 also authorizes the Executive Director of the Board to offer an individual a corrective action if the individual has committed a violation for which a corrective action may be imposed. If the individual accepts the offer of the corrective action, SB 1415 requires the Board to close the case. However, if the individual chooses not to accept the offer of the corrective action, or if the individual fails to respond in a timely manner to the offer of the corrective action, SB 1415 requires the Executive Director to terminate the proceedings under new Subchapter N and to dispose of the matter as a complaint under Subchapter J.

SB 1415 requires the Board to adopt, by rule, guidelines for the types of violations for which a corrective action may be imposed under new Subchapter N. Adopted new §213.32(1) - (4) implements this requirement by: (i) identifying the specific violations for which a corrective action may be offered; (ii) establishing the eligibility requirements that an individual must meet in order to qualify to receive a corrective action; (iii) establishing the amount of the fine that may be imposed as part of a corrective action; (iv) clarifying that the Executive Director has the sole discretion to offer an individual a corrective action; and (v) clarifying that an individual may not receive a corrective action as the result of a contested case proceeding conducted under the Government Code Chapter 2001.

Adopted new §213.32(1) defines the term 'corrective action' and clarifies that a corrective action under §213.32 is not a disciplinary action under Subchapter J. This adopted new paragraph is necessary to emphasize the difference between a corrective action proceeding under new Subchapter N and a disciplinary action under Subchapter J. SB 1415 specifically provides that a corrective action is not a disciplinary action. This distinction is significant because the Board's existing disciplinary policies, procedures, and requirements will not apply to a corrective action proceeding under new Subchapter N. Rather, the Board will apply the procedures and requirements of SB 1415 and the pro-

visions of adopted §213.32 to a corrective action proceeding. As such, it is imperative that each licensee and individual regulated under Chapter 301 become familiar with the differences in these policies, procedures, and requirements.

The provisions of adopted new §213.32(2) - (4) establish the specific procedures and requirements that will apply to a corrective action proceeding under new Subchapter N. Adopted new §213.32(2) specifies seven types of violations for which the Board may offer an individual a corrective action. These are the only types of violations that may be resolved through a corrective action proceeding. The Board has determined that it is not appropriate for a corrective action to be offered in cases where: (i) errors in practice or medication administration have occurred; (ii) an individual's criminal conduct is at issue; (iii) an individual's drug abuse, chemical dependency, or substance abuse is at issue; or (iv) an individual's physical or mental status is at issue. This is primarily because a corrective action will not be reported to the public or HIPDB. As a result, members of the public, such as an individual's employer or client, will not be made aware of the individual's conduct that resulted in the corrective action. This does not generally concern the Board, provided that the individual's conduct is isolated and relatively minor in nature. However, the Board is concerned with cases involving more serious conduct, such as medication administration errors and impairment issues. In these types of cases, an individual's conduct should be evaluated and sanctioned pursuant to the Board's established disciplinary policies, procedures, and requirements, and notice of the individual's conduct should be provided to the public and HIPDB. The Board has determined that it cannot effectively regulate an individual who has committed a serious violation through a corrective action proceeding. For violations of a serious nature, the Board must be able to proceed under its established disciplinary policies, procedures, and requirements that provide for the sanctioning, monitoring, and reporting of such conduct. For violations that involve conduct that is relatively minor in nature, however, the Board believes that corrective action proceedings can effectively address those issues. Therefore, the Board is adopting new §213.32(2), which specifies seven minor, administrative violations that may be resolved through corrective action proceedings. These specified violations typically involve a low risk of harm to the public. As such, the Board believes that these types of violations may be safely resolved through a corrective action proceeding.

Adopted new §213.32(2) also makes clear that a corrective action is only appropriate in situations where an individual has committed one of the specified violations for the first time. If an individual has committed one of the specified violations more than once, the individual will not be eligible to receive a corrective action. This requirement is necessary to ensure that an individual's repeated pattern of conduct is reviewed under the Board's established disciplinary policies and procedures to determine whether a more severe sanction should be imposed on the individual in order to prevent the individual from committing the violation again.

Adopted new §213.32(3) further clarifies that an individual will not be eligible to receive a corrective action if the individual has committed more than one of the violations specified in adopted new §213.32(2). Like the provision in adopted new §213.32(2), this new requirement is necessary to ensure that an individual's pattern of conduct is reviewed under the Board's existing disciplinary policies and procedures to determine whether a more severe sanction should be imposed in order to prevent the re-occurrence of the conduct. While the Board believes that a single violation committed by an individual may be appropriately resolved through a corrective action proceeding under new Subchapter N, the Board has determined that multiple violations may indicate a more serious disciplinary issue and should be resolved through the Board's established disciplinary policies and procedures. The adopted amendments and new paragraphs support this position by prohibiting an individual from receiving a corrective action if the individual has committed multiple violations.

SB 1415 permits a corrective action to consist of remedial education, a fine, or any combination of remedial education and a fine. Pursuant to new Subchapter N, the Board has determined the amount of a fine imposed as part of a corrective action under new Subchapter N to be $500. The Board has considered the following factors in determining the amount of this fine: (i) the seriousness of the violations for which a corrective action may be imposed; (ii) the amount necessary to defer future violations; (iii) the harm likely caused by the violations for which a corrective action may be imposed; and (iv) the hazard or potential hazard to the health, safety, and economic welfare of the public. Although the violations specified in adopted new §213.32(2) are typically less serious than violations involved in a disciplinary action, such conduct should not be repeated. Further, all violations of statute or Board rule or policy should be taken seriously, regardless of whether the conduct results in a corrective action under new Subchapter N or a disciplinary action under Subchapter J. As such, the Board has determined that a fine in the amount of $500 should be sufficient to deter an individual from repeating the conduct that resulted in the corrective action. Further, the Board has determined that a fine in the amount of $500 is appropriate in light of the seriousness of the types of violations for which a corrective action may be imposed and the risk of harm to the public that the violations may cause.

Finally, adopted new §213.32(4) is necessary to clarify that the Executive Director of the Board has the sole discretion, subject to Board regulation, to offer an individual a corrective action under new Subchapter N. Adopted new §213.32(4) also clarifies that a corrective action is not available as the result of a contested case proceeding under the Government Code Chapter 2001. SB 1415 provides that the Executive Director may determine if an individual has committed a violation for which a corrective action may be imposed. Further, SB 1415 provides that the Executive Director may give written notice of her determination and recommendation for the corrective action to the individual. SB 1415 also requires a case to be closed if the individual accepts the Executive Director's determination and satisfies the recommended corrective action. If the individual does not accept the Executive Director's determination and recommended corrective action, however, SB 1415 directs the Executive Director to terminate proceedings under new Subchapter N and to dispose of the matter as a complaint under Subchapter J. The provisions of adopted new §213.32(4) are consistent with these new statutory sections. First, adopted new §213.23(4) re-iterates the difference between a corrective action proceeding under new Subchapter N and a disciplinary proceeding under Subchapter J. Because a corrective action proceeding is not a disciplinary action under Subchapter J and is not subject to the Government Code Chapter 2001, a corrective action is not a remedy that will be available to an individual as the result of a contested case under the Government Code Chapter 2001. Only if an individual rejects the offer of a corrective action or fails to timely respond to the offer of the corrective action will the matter be terminated under new Subchapter N and be disposed of as a disciplinary action under Subchapter J. In that situation, an individual will be

entitled to the remedies available as the result of a contested case under the Government Code Chapter 2001. Those remedies, however, will not include a corrective action. Adopted new §213.32(4) re-emphasizes this distinction and clarifies that a corrective action is not a remedy that will be available to an individual who is afforded a hearing in a disciplinary matter at the State Office of Administrative Hearings.

Fines in Disciplinary Matters

The remaining adopted amendments are necessary to revise and clarify the disciplinary sanctions and the amount of administrative fines that may be imposed upon an individual in a disciplinary action. The provisions of adopted §213.32(5) and (6) apply only to disciplinary actions under Subchapter J. Adopted §213.32(5) addresses disciplinary actions that are typically resolved through remedial education and/or a fine. Adopted §213.32(6) addresses disciplinary actions that are resolved through other disciplinary sanctions, such as Warnings, Reprimands, Suspensions, or Revocations. A fine may be imposed as part of a sanction in a disciplinary action. The provisions of adopted §213.32(5) and (6) will not apply to a fine imposed as part of a corrective action under new Subchapter N and adopted new §213.32(1) - (4). This is an important distinction. The provisions of adopted §213.32(5) and (6) are separate and apart from the adopted provisions of new §213.32(1) - (4). Adopted new §213.32(1) - (4) will apply only to corrective actions under new Subchapter N. Adopted §213.32(5) and (6) will apply only to disciplinary actions under Subchapter J.

The Board originally adopted §213.32 on August 15, 2002, and amended §213.32 on May 17, 2004. While the adopted amendments to §213.32(5) and (6) generally retain the content of the former rule, including the specified types of violations for which administrative fines may be imposed, the amounts of the fines that correspond to the specified types of violations have been revised. At its April, 2008, Board meeting, the Board approved the use of a Disciplinary Matrix (Matrix) in its disciplinary cases to assist the Board in analyzing violations of Chapter 301 and Board policies and rules and imposing consistent and fair sanctions for those violations. The Matrix was published in the May 9, 2008, issue of the *Texas Register* (33 TexReg 3826), for public comment. Since that time, the Board has utilized the Matrix to analyze an individual's conduct and to determine the appropriate sanction for that conduct. For each violation specified in the Occupations Code §301.452(b), the Matrix contains a corresponding recommended sanction, including the amounts of administrative fines, where appropriate. The amounts of the fines in adopted §213.32 are consistent with the amounts of the fines specified in the Matrix. Prior to the adoption of the amendments to §213.32, the amounts of fines in §213.32 were lower than the amounts of fines specified in the Matrix. This is primarily because §213.32 has not been amended by the Board since 2004. Adopted §213.32(5) and (6) correct any inconsistencies between §213.32 and the Matrix by revising the amounts of the fines in §213.32 to be consistent with the amounts of the fines specified in the Matrix. For the most part, this has been accomplished by increasing the amounts of the fines in §213.32 from $100 to $250 for the first occurrence of a specified violation, and from $200 or $250 to $500 for a subsequent occurrence of a specified violation. These revisions are necessary to ensure the consistent application of Board policy in disciplinary cases, which ultimately results in more fair and efficient regulation. Further, the adopted amendments to §213.32(5) and (6) are authorized under the Occupations Code §§301.453(a), 301.4531, 301.501, and 301.502. The Occupations Code §301.453(a) authorizes the imposition of a fine in a disciplinary case. The Occupations Code §301.501 specifically authorizes the Board to impose an administrative penalty for a violation of Chapter 301 or a rule or order adopted under Chapter 301. The Occupations Code §301.4531(b) and §301.502 require the Board to consider the following factors when determining the appropriate sanction, including the amount of any administrative fine, in a disciplinary case: (i) whether an individual is being disciplined for multiple violations of Chapter 301 or a rule or order adopted under Chapter 301; (ii) whether an individual has previously been the subject of disciplinary action by the Board and has previously complied with Board rules and Chapter 301; (iii) the seriousness of the violation; (iv) the threat or hazard to public safety; (v) the amount necessary to deter a future violation; (vi) efforts made to correct the violation; and (vii) any mitigating factors or other matters that justice may require. The Board has considered these factors in adopting the amounts of the fines in the Board's Matrix and in adopted §213.32(5) and (6). First, the Board has identified specific violations for which a fine may be imposed in a disciplinary case. Second, the Board has established a range of fines for the specified violations. While the range of fines prescribes the minimum and maximum amount of a fine that may be imposed for a specified violation, the range also provides flexibility for the Board to consider mitigating factors and impose a fine within the prescribed range that appropriately accounts for such mitigation. Third, the Board has established the amount of a fine for the first occurrence of a violation and for a subsequent occurrence of the violation. This distinction allows the Board to appropriately consider whether an individual has previously been the subject of disciplinary action by the Board. Fourth, the Board has distinguished the severity of the specified violations by separating the violations into two separate paragraphs: §213.32(5), which addresses violations that may be resolved through remedial education and/or a fine, and §213.32(6), which addresses more serious violations that may be resolved through Warnings, Reprimands, Suspensions, or Revocations. Finally, adopted §213.32(6) addresses situations in which an individual has committed several of the violations specified in adopted §213.32(2) and (5), which allows the Board to appropriately consider the amount of a fine in situations where an individual is being disciplined for multiple violations.

Adopted §213.32(7) is necessary to clarify that the Executive Director is authorized to dispose of the violations specified in adopted §213.32(2) and adopted §213.32(5) without the ratification of the Board. Specifically, the adopted provision authorizes the Executive Director to offer and accept corrective actions under new Subchapter N without the necessity of the Board ratifying those actions. The adopted provision also authorizes the Executive Director to offer and accept disciplinary actions that result in remedial education, with or without a fine, without the necessity of the Board ratifying those actions. While the Executive Director is required to report these cases to the Board during its regularly scheduled meetings, the adopted sections allow the Executive Director to resolve these cases in as quick and efficient manner as possible. This is beneficial to the Board and regulated individuals because it allows individuals to resolve matters with the Board in a faster and more efficient manner.

The remaining adopted amendments are necessary to re-designate the paragraphs and subparagraphs of the adopted section.

HOW THE SECTIONS WILL FUNCTION. The adopted title of §213.32 includes the new subject matter of the section, corrective action proceedings, and corrects a grammatical error. Adopted new §213.32(1) provides that, for purposes of §213.32

only, the term 'corrective action' has the meaning assigned by the Occupations Code §301.651. Further, adopted §213.32(1) states that a corrective action imposed under §213.32 is not a disciplinary action under the Occupations Code Chapter 301 Subchapter J. Adopted §213.32(2) provides that, pursuant to the Occupations Code §301.652, the Board may impose a corrective action for the first occurrence of the following violations: (i) practice on a delinquent license for more than six months but less than one year; (ii) failure to comply with continuing competency requirements; (iii) failure to assure licensure/credentials of personnel for whom the nurse is administratively responsible; (iv) failure to provide employers, potential employers, or the Board with complete and accurate answers to either oral or written questions on subject matters including, but not limited to: employment history, licensure history, and criminal history; (v) failure to comply with Board requirements for change of name/address; (vi) failure to develop, maintain, and implement a peer review plan according to statutory peer review requirements; and (vii) failure of an advanced practice registered nurse to register for prescriptive authority in an additional role and population focus area, where the advanced practice registered nurse otherwise meets all requirements for prescriptive authority as specified in 22 TAC Chapter 222 (relating to Advanced Practice Nurses With Prescriptive Authority). Adopted §213.32(3) states that an individual will not be eligible for a corrective action if the individual has committed more than one of the violations listed in adopted new §213.32(2). Further, if a fine is imposed by the Board as part of a corrective action under adopted §213.32(2), adopted new §213.32(3) states that the amount of the fine shall be $500. Adopted §213.32(4) states that the opportunity to enter into an agreed corrective action order is at the sole discretion of the Executive Director and is not available as a result of a contested case proceeding conducted pursuant to the Government Code Chapter 2001. Adopted §213.32(5) provides that a fine, with or without remedial education stipulations, may be imposed in a disciplinary matter for the following violations in the following amounts: (i) failure to comply with continuing competency requirements, $250 for the first occurrence and $500 for a subsequent occurrence; (ii) failure to comply with mandatory reporting requirements, $250 - $500 for the first occurrence and $500 -$1,000 for a subsequent occurrence; (iii) failure to assure licensure/credentials of personnel for whom the nurse is administratively responsible, $250 - $500 for the first occurrence and $500 - $1,000 for a subsequent occurrence; (iv) failure to provide employers, potential employers, or the Board with complete and accurate answers to either oral or written questions on subject matters including but not limited to: employment history, licensure history, criminal history, $250 - $800 for the first occurrence and $500 -$1,000 for a second occurrence; failure to report unauthorized practice, $250 - $500 for the first occurrence and $500 - $1,000 for a subsequent occurrence; (v) failure to comply with Board requirements for change of name/address, $250 for the first occurrence and $300 for a subsequent occurrence; (vi) failure to develop, maintain and implement a peer review plan according to statutory peer review requirements, $250 - $1,000 for the first occurrence and $500 -$1,000 for a subsequent occurrence; (vii) failure to file, or cause to be filed, complete, accurate and timely reports required by Board order, $250 for the first occurrence; failure to make complete and timely compliance with the terms of any stipulation contained in a Board order, $250 for the first occurrence; (viii) failure to report patient abuse to the appropriate authority of the State of Texas, including but not limited to, providing inaccurate or incomplete information when requested from said authorities, $500 for the first occurrence and $1,000 - $5,000 for the second occurrence; and (ix) other non-compliance with the NPA, Board rules or orders which does not involve fraud, deceit, dishonesty, intentional disregard of the NPA, Board rules, Board orders, harm or substantial risk of harm to patients, clients or the public, $250 - $500 for the first occurrence and $500 - $1,000 for a subsequent occurrence. Adopted §213.32(6) provides that the following violations may be appropriate for disposition by fine in conjunction with one or more of the penalties/sanctions contained elsewhere in the Board's rules: (i) violations other than those listed in adopted §213.32(2) and adopted §213.32(5), $250 - $1,000 for the first occurrence and $500 - $1,000 for a subsequent occurrence; and (ii) a cluster of violations listed in adopted §213.32(2) and adopted §213.32(5), $250 - $5,000. Adopted §213.32(7) provides that the Executive Director is authorized to dispose of violations listed in adopted §213.32(2) and adopted §213.32(5) without ratification by the Board. Further, the Executive Director shall report such cases to the Board at its regular meetings.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

§213.32(2) and (3)

Comment: A commenter representing an organization states that proposed §213.32(2) limits corrective action to six violations. The commenter states that his organization does not disagree with initially limiting the violations eligible for corrective action to these six violations, but his organization believes it is premature to state categorically that it is not appropriate for corrective action to be offered in cases where: (i) errors in practice or medication administration have occurred; (ii) an individual's criminal conduct is at issue; (iii) an individual's drug abuse is at issue; or (iv) an individual's physical or mental state is at issue. The commenter states that such a categorical statement would seem to preclude corrective action from ever being considered as potentially applicable to any of these situations. The commenter further states that his organization does not believe that such a categorical statement should be made without any experience with corrective action and how it may work. Further, the commenter states that such a categorical statement seems inconsistent with 22 TAC §217.16 (relating to Reporting of Minor Incidents), which does not require every medication administration error to be reported to the Board. The commenter requests that the preamble to the adopted rule not include such a broad, categorical statement of the types of violations to which corrective action may not be applicable.

The commenter also requests that §213.32(3) be revised to give the Board's Executive Director discretion to take corrective action if a nurse has committed more than one of the six violations listed. The commenter states that the proposed rule makes a nurse ineligible for corrective action if he or she has committed more than one of the six violations listed. Further, while the commenter's organization does not disagree that multiple violations may indicate a more serious disciplinary issue which should be resolved through the disciplinary process, the commenter's organization does not believe that multiple violations necessarily do so. The commenter provides an example where a nurse experiences a dramatic event in her/his life that causes depression, and the nurse subsequently takes time off from nursing for a period of time. Then, the nurse's license comes up for renewal, and the nurse moves during this time and fails both to complete his/her continued competency requirements and to notify the Board of an address change. The commenter provides another example where a nurse receives corrective action for failure to comply with continued competency requirements and then, two

years later, fails to notify the Board of a change of address. The commenter states that in neither of these two examples would it appear that the two violations indicate a more serious disciplinary violation. However, under the proposed rule, the commenter states, in both examples the nurses would be ineligible for corrective action. The commenter states that it is within the Board's Executive Director's sole discretion as to whether corrective action is available. The commenter states that his organization does not believe there is any reason to limit this discretion because of multiple violations. Further, the commenter states that if the Board believes that multiple violations should make a nurse ineligible, then the commenter's organization would request that ineligibility be limited to multiple violations of the same type, such as twice failing to notify the Board of a change in address.

Agency Response: The Board declines to make the suggested changes at this time. SB 1415 authorizes certain violations of the Occupations Code Chapter 301 to be resolved through non-disciplinary, corrective actions. A corrective action is confidential and will not be reportable to the public or HIPDB. As a result, members of the public, such as an individual's employer or client, will not be made aware of conduct that results in a corrective action. The Board's mission is to ensure the protection of the public health, safety, and welfare. The Board may not be able to adequately fulfill this duty if violations of a serious nature or multiple, but less significant violations, are not reported to the public and monitored by the Board. As such, the Board has determined that it is necessary to limit the number and types of violations for which a corrective action may be imposed. This is especially true since the Board has not yet had enough time to evaluate the efficacy of issuing corrective actions. As such, the Board is reluctant to permit matters that may result in serious patient harm, such as errors in practice and medication administration; criminal conduct; drug abuse, chemical dependency, and substance abuse; and physical and mental impairment, to be resolved through non-reportable, non-public corrective actions at this time. The Executive Director does not have unfettered discretion to determine when a corrective action is appropriate. Rather, the Executive Director's discretion to offer a corrective action is regulated by the Board, who establishes the types of violations for which a corrective action may be offered. The Board is not convinced that it appropriate to offer a corrective action to an individual who has committed more than one violation of Chapter 301 at this time. The Board is concerned that multiple or repetitive violations of Chapter 301 may be indicative of a more serious pattern of conduct that warrants a more severe sanction than a corrective action. As such, the Board has determined that corrective actions should be reserved for one-time, minor, administrative violations, at this time. The Board may be willing to consider permitting additional types of violations to be resolved through corrective actions at some point in the future. However, the Board finds that it lacks the requisite information to consider such a change at this point in time.

The Eligibility and Disciplinary Advisory Committee

The Eligibility and Disciplinary Advisory Committee (Committee) convened on September 17, 2009 and considered the proposed amendments to §213.32, pertaining to Schedule of Administrative Fine(s) and §211.7, pertaining to Executive Director. Certain members of the Committee expressed concern that the proposed rules were too restrictive and suggested that the Executive Director be given more flexibility in determining which violations could be resolved through a corrective action. Other members of the Committee felt that the requirements were appropriate as proposed and suggested that the Board re-evaluate the requirements after more time had passed. One member of the Committee requested that the Board consider including an advanced practice registered nurse's failure to apply for prescriptive authority in a new role and failure to maintain national certification as violations for which a corrective action could be imposed. Several members of the Committee agreed that there should be a limit as to the violations that would be eligible for a corrective action, but they were unsure of how to determine what that limit should be. Most of the members of the Committee, however, generally expressed confidence in the Board's existing processes for the review and resolution of complaints.

The Board declines to make many of the Committee's suggested modifications to the proposed rule for the reasons set forth previously in this Rule Adoption. However, the Board has determined that an advanced practice registered nurse's failure to apply for prescriptive authority in a new role is appropriate for resolution through a corrective action. This type of violation is administrative in nature and its associated threat of public harm is low. As such, the Board has modified §213.32(2) as adopted to include the failure of an advanced practice registered nurse to register for prescriptive authority in an additional role and population focus area as an additional violation that may be resolved through a corrective action.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For: None.

Against: None.

For, with changes: None.

Neither for nor against, with changes: The Texas Nurses Association.

STATUTORY AUTHORITY. The amendments and new paragraphs are adopted under the Occupations Code §§301.453(a), 301.4531, 301.466(a) and (b), 301.501, 301.502, 301.651 - 301.657, and 301.151. The Occupations Code §301.453(a) provides that, if the Board determines that a person has committed an act listed in §301.452(b), the Board shall enter an order imposing one or more of the following: (1) denial of the person's application for a license, license renewal, or temporary permit; (2) issuance of a written warning; (3) administration of a public reprimand; (4) limitation or restriction of the person's license, including limiting to or excluding from the person's practice one or more specified activities of nursing or stipulating periodic board review; (5) suspension of the person's license for a period not to exceed five years; (6) revocation of the person's license; or (7) assessment of a fine. The Occupations Code §301.4531(a) states that the Board by rule shall adopt a schedule of the disciplinary sanctions that the Board may impose under Chapter 301. In adopting the schedule of sanctions, the Board shall ensure that the severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action. The Occupations Code §301.4531(b) states, in determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the Board shall consider: (i) whether the person is being disciplined for multiple violations of either Chapter 301 or a rule or order adopted under Chapter 301 or has previously been the subject of disciplinary action by the Board and has previously complied with Board rules and Chapter 301; (ii) the seriousness of the violation; (iii) the threat to public safety; and (iv) any mitigating factors. The Occupations Code §301.4531(c) provides that, in the case

of a person described by §301.4531(b)(1)(A), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a single violation; and in the case of a person described by §301.4531(b)(1)(B), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a person who has not previously been the subject of disciplinary action by the Board. The Occupations Code §301.466(a) provides that a complaint and investigation concerning a nurse under Subchapter J and all information and material compiled by the Board in connection with the complaint and investigation are confidential and not subject to disclosure under the Government Chapter 552 and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for release to anyone other than the Board or a Board employee or agent involved in license holder discipline. The Occupations Code §301.466(b) provides that, notwithstanding §301.466(a), information regarding a complaint and an investigation may be disclosed to: (i) a person involved with the Board in a disciplinary action against the nurse; (ii) a nursing licensing or disciplinary Board in another jurisdiction; (iii) a peer assistance program approved by the Board under the Health and Safety Code Chapter 467; (iv) a law enforcement agency; or (v) a person engaged in bona fide research, if all information identifying a specific individual has been deleted. The Occupations Code §301.501 provides that the Board may impose an administrative penalty on a person licensed or regulated under Chapter 301 who violates Chapter 301 or a rule or order adopted under Chapter 301. The Occupations Code §301.502(a) states that the amount of the administrative penalty may not exceed $5,000 for each violation. Further, each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The Occupations Code §301.502(b) states that the amount of the penalty shall be based on: (i) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts and the hazard or potential hazard created to the health, safety, or economic welfare of the public; (ii) the economic harm to property or the environment caused by the violation; (iii) the history of previous violations; (iv) the amount necessary to deter a future violation; (v) efforts made to correct the violation; and (vi) any other matter that justice may require. The Occupations Code §301.651 provides that "corrective action" means a fine or remedial education imposed under §301.652. The Occupations Code §301.652(a) states that the Board may impose a corrective action on a person licensed or regulated under Chapter 301 who violates Chapter 301 or a rule or order adopted under Chapter 301. The corrective action: (i) may be a fine, remedial education, or any combination of a fine or remedial education; (ii) is not a disciplinary action under Subchapter J; and (iii) is subject to disclosure only to the extent a complaint is subject to disclosure under §301.466. The Occupations Code §301.652(b) authorizes the Board to adopt guidelines for the types of violations for which a corrective action may be imposed. The Occupations Code §301.653 states that, if the Executive Director determines that a person has committed a violation for which a corrective action may be imposed under the guidelines adopted under §301.652(b), the Executive Director may give written notice of the determination and recommendation for corrective action to the person subject to the corrective action. The notice may be given by certified mail. The notice must: (i) include a brief summary of the alleged violation; (ii) state the recommended corrective action; and (iii) inform the person of the person's options in responding to the notice. The Occupations Code §301.654 states that, not later than the 20th day after the date the person receives the notice under §301.653, the person may accept in writing the Executive Director's determination and recommended corrective action or reject the Executive Director's determination and recommended corrective action. The Occupations Code §301.655(a) states that, if the person accepts the Executive Director's determination and satisfies the recommended corrective action, the case is closed. The Occupations Code §301.655(b) states that, if the person does not accept the Executive Director's determination and recommended corrective action as originally proposed or as modified by the Board or fails to respond in a timely manner to the Executive Director's notice as provided by §301.654, the Executive Director shall terminate proceedings under Subchapter N and dispose of the matter as a complaint under Subchapter J. The Occupations Code §301.656 states that the Executive Director shall report periodically to the Board on the corrective actions imposed under Subchapter N, including: (i) the number of corrective actions imposed; (ii) the types of violations for which corrective actions were imposed; and (iii) whether affected nurses accepted the corrective actions. The Occupations Code §301.657(a) states that, except to the extent provided by §301.657, a person's acceptance of a corrective action under Subchapter N does not constitute an admission of a violation but does constitute a plea of nolo contendere. The Occupations Code §301.657(b) provides that the Board may treat a person's acceptance of corrective action as an admission of a violation if the Board imposes a sanction on the person for a subsequent violation of Chapter 301 or a rule or order adopted under Chapter 301. The Occupations Code §301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (1) perform its duties and conduct proceedings before the Board; (2) regulate the practice of professional nursing and vocational nursing; (3) establish standards of professional conduct for license holders Chapter 301; and (4) determine whether an act constitutes the practice of professional nursing or vocational nursing.

§213.32. Corrective Action Proceedings and Schedule of Administrative Fines.

A corrective action may be imposed by the Board as specified in the following circumstances.

(1) For purposes of this section only, corrective action has the meaning assigned by the Occupations Code §301.651. A corrective action imposed under this section is not a disciplinary action under the Occupations Code Chapter 301, Subchapter J.

(2) Pursuant to the Occupations Code §301.652, the Board may impose a corrective action for the first occurrence of each of the following violations:

(A) practice on a delinquent license for more than six months but less than one year;

(B) failure to comply with continuing competency requirements;

(C) failure to assure licensure/credentials of personnel for whom the nurse is administratively responsible;

(D) failure to provide employers, potential employers, or the Board with complete and accurate answers to either oral or written questions on subject matters including, but not limited to: employment history, licensure history, and criminal history;

(E) failure to comply with Board requirements for change of name/address;

(F) failure to develop, maintain, and implement a peer review plan according to statutory peer review requirements; and

(G) failure of an advanced practice registered nurse to register for prescriptive authority in an additional role and population focus area, where the advanced practice registered nurse otherwise meets all requirements for prescriptive authority as specified in Chapter 222 of this title (relating to Advanced Practice Nurses With Prescriptive Authority).

(3) An individual will not be eligible for a corrective action if the individual has committed more than one of the violations listed in paragraph (2) of this section. If a fine is imposed by the Board as part of a corrective action under paragraph (2) of this section, the amount of the fine shall be $500.

(4) The opportunity to enter into an agreed corrective action order is at the sole discretion of the Executive Director and is not available as a result of a contested case proceeding conducted pursuant to the Government Code Chapter 2001.

(5) A fine, with or without remedial education stipulations, may be imposed in a disciplinary matter for the following violations in the following amounts:

(A) practice on a delinquent license for more than six months but less than two years:

(i) first occurrence: $250;

(ii) subsequent occurrence: $500;

(B) practice on a delinquent license for two to four years:

(i) first occurrence: $500;

(ii) subsequent occurrence: $1,000;

(C) practice on a delinquent license more than four years: $1,000 plus $250 for each year over four years;

(D) failure to comply with continuing competency requirements:

(i) first occurrence: $250;

(ii) subsequent occurrence: $500;

(E) failure to comply with mandatory reporting requirements:

(i) first occurrence: $250 - $500;

(ii) subsequent occurrence: $500 - $1,000;

(F) failure to assure licensure/credentials of personnel for whom the nurse is administratively responsible:

(i) first occurrence: $250 - $500;

(ii) subsequent occurrence: $500 - $1,000;

(G) failure to provide employers, potential employers, or the Board with complete and accurate answers to either oral or written questions on subject matters including but not limited to: employment history, licensure history, criminal history:

(i) first occurrence: $250 - $800;

(ii) second occurrence: $500 - $1000;

(H) failure to report unauthorized practice:

(i) first occurrence: $250 - $500;

(ii) subsequent occurrence: $500 - $1,000;

(I) failure to comply with Board requirements for change of name/address:

(i) first occurrence: $250;

(ii) subsequent occurrence: $300;

(J) failure to develop, maintain and implement a peer review plan according to statutory peer review requirements:

(i) first occurrence: $250 - $1,000;

(ii) subsequent occurrence: $500 - $1,000;

(K) failure to file, or cause to be filed, complete, accurate and timely reports required by Board order: $250 for first occurrence;

(L) failure to make complete and timely compliance with the terms of any stipulation contained in a Board order: $250 for first occurrence;

(M) failure to report patient abuse to the appropriate authority of the State of Texas, including but not limited to, providing inaccurate or incomplete information when requested from said authorities:

(i) first occurrence: $500;

(ii) second occurrence: $1000 - $5000; and

(N) other non-compliance with the NPA, Board rules or orders which does not involve fraud, deceit, dishonesty, intentional disregard of the NPA, Board rules, Board orders, harm or substantial risk of harm to patients, clients or the public:

(i) first occurrence: $250 - $500;

(ii) subsequent occurrence: $500 - $1,000.

(6) The following violations may be appropriate for disposition by fine in conjunction with one or more of the penalties/sanctions contained elsewhere in the Board's rules:

(A) violations other than those listed in paragraphs (2) and (5) of this section:

(i) first occurrence: $250 - $1,000;

(ii) subsequent occurrence: $500 - $1,000; and

(B) a cluster of violations listed in paragraphs (2) and (5) of this section: $250 - $5,000.

(7) The executive director is authorized to dispose of violations listed in paragraphs (2) and (5) of this section without ratification by the Board. The executive director shall report such cases to the Board at its regular meetings.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 26, 2009.

TRD-200904841
Jena Abel
Assistant General Counsel
Texas Board of Nursing
Effective date: November 15, 2009
Proposal publication date: September 4, 2009
For further information, please call: (512) 305-6822

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §537.30, §537.31

The Texas Real Estate Commission (TREC) adopts amendments to §537.30, Standard Contract Form TREC No. 23-9 (New Home Contract (Incomplete Construction)) and §537.31, Standard Contract Form TREC No. 24-9 (New Home Contract (Complete Construction)) without changes to the proposed text as published in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6278), and will not be republished. The amendments eliminate from the new home contracts provisions required by the Texas Residential Construction Commission Act (Title 16 of the Texas Property Code) that are no longer appropriate after the September 1, 2009, expiration of the Act. In §537.30 and §537.31, Standard Contract Forms TREC Nos. 23-9 and 24-9 are amended to delete from Paragraph 22 the references to the Addendum Containing Required Notices under §§5.016, 420.001 and 420.002, Texas Property Code, which is being repealed. These amendments were adopted on an emergency basis at the August 17, 2009, commission meeting, as published in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6202).

The reasoned justification for the amendments as adopted is consistency between state law and the TREC-promulgated contract forms.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Occupations Code, §1101.155, which authorizes the Texas Real Estate Commission to adopt rules in the public's best interest that require license holders to use contract forms prepared by the Texas Real Estate Broker-Lawyer Committee and adopted by the commission.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 21, 2009.

TRD-200904804
Devon V. Bijansky
Assistant General Counsel
Texas Real Estate Commission
Effective date: December 1, 2009
Proposal publication date: September 11, 2009
For further information, please call: (512) 465-3926

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22 TAC §537.50

The Texas Real Estate Commission (TREC) adopts the repeal of §537.50, Standard Contract Form TREC No. 43-0 (Addendum Containing Required Notices under §§5.016, 420.001 and 420.002, Texas Property Code), without changes to the proposal as published in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6278), and will not be republished. The repeal of §537.50, Standard Contract Form TREC No. 43-0, repeals the Addendum Containing Required Notices Under §§5.016, 420.001 and 420.002, Texas Property Code, which is longer required to be provided to buyers of new homes. This repeal was adopted on an emergency basis at the August 17, 2009, commission meeting, as published in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6202).

The reasoned justification for the repeal as adopted is consistency between state law and the TREC-promulgated contract forms.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Occupations Code, §1101.155, which authorizes the Texas Real Estate Commission to adopt rules in the public's best interest that require license holders to use contract forms prepared by the Texas Real Estate Broker-Lawyer Committee and adopted by the commission.

The statute affected by this repeal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the adopted repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 21, 2009.

TRD-200904805
Devon V. Bijansky
Assistant General Counsel
Texas Real Estate Commission
Effective date: December 1, 2009
Proposal publication date: September 11, 2009
For further information, please call: (512) 465-3926

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE

SUBCHAPTER O. ADVISORY COMMITTEES

DIVISION 1. GENERAL REQUIREMENTS

31 TAC §51.601

The Texas Parks and Wildlife Commission (Commission) adopts an amendment to §51.601, concerning advisory committees, with changes to the proposed text as published in the July 17, 2009, issue of the *Texas Register* (34 TexReg 4720). The change removes the reference to the September 1, 2005 expiration date in subsection (f), since that date has passed. Also,

the word "to" was replaced with the word "of" for grammatical accuracy.

Parks and Wildlife Code, §11.062, authorizes the Chairman of the Commission to "appoint committees to advise the Commission on issues under its jurisdiction." Government Code, Chapter 2110, requires that rules be adopted regarding each state agency advisory committee. Unless otherwise provided by specific statute, the rules must: (1) state the purpose of the committee; (2) describe the manner in which the committee will report to the agency; and (3) establish the date on which the committee will automatically be abolished, unless the advisory committee has a specific duration established by statute. Other requirements for advisory committees include an annual evaluation, a membership limit of 24 members, balanced membership representation, the selection of a presiding officer by members, and a four-year duration unless otherwise provided by rule. Effective September 28, 2005, the Commission adopted rules governing advisory committees for the department and the Commission. The advisory committees created by those rules expired on September 29, 2009. Therefore, it is necessary to extend the expiration date for each of the committees so they may continue to function.

The rule will function by establishing an expiration date of October 10, 2010 for all advisory committees.

The department received no comments opposing adoption of the proposed rule.

The department received seven comments supporting adoption of the proposed rule.

No groups or associations commented in favor of or opposition to adoption of the proposed rule.

The amendment is adopted under the authority of Parks and Wildlife Code, §11.0162 and Government Code, §2110.005 and §2110.008.

§51.601. General Requirements.

(a) Definitions. The following words and terms, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise.

(1) Advisory committee--a committee, council, commission, board, or task force or other entity with multiple members that has as its primary function advising the department.

(2) Chairman--the chairman of the Texas Parks and Wildlife Commission.

(3) Commission--the Texas Parks and Wildlife Commission.

(4) Department--the Texas Parks and Wildlife Department.

(5) Director--the Executive Director of the Texas Parks and Wildlife Department.

(b) Creation. The Chairman may appoint advisory committees to advise the commission on issues within the jurisdiction of the department or the commission.

(c) Function. Unless otherwise provided by law, an advisory committee will address only those matters about which advice is sought. An advisory committee will have no authority to establish agency policy.

(d) Expiration of advisory committee. Unless expressly provided in this subchapter or other law, each department advisory committee will expire on October 1, 2010.

(e) Membership. The chairman may, in his or her sole discretion, appoint individuals to serve on an advisory committee. Membership in an advisory committee will not exceed 24 (excluding ex officio members). Unless otherwise provided by specific statute, membership of each advisory committee shall be balanced to ensure representation of industries or occupations regulated or directly affected by the department and consumers of services provided by the department or by the industries or occupations regulated by the department to which the advisory committee relates. Each advisory committee shall include at least one department employee as an ex officio member. Members may be subject to removal and/or replacement at the discretion of the Chairman.

(f) Term of members. Unless expressly provided in this subchapter or other law, each member of an agency advisory committee will serve a term of four years. The terms may be staggered. Members' terms will expire at the end of four years or upon the termination of the advisory committee, whichever is earlier. Members may be reappointed. Members serve at the will of the chairman and may be removed at any time by the chairman.

(g) Presiding officer. The presiding officer of each advisory committee shall be selected by the members of the advisory committee from its membership. The chairman may make a recommendation to the advisory committee regarding the presiding officer.

(h) Subcommittees. The chairman may also appoint one or more subcommittees of an advisory committee, so long as the membership of the advisory committee, including any subcommittees does not exceed 24.

(i) Meetings. Each committee shall meet at least once a year, but may meet as often as necessary. The department ex officio member of each advisory committee shall work with the presiding officer to schedule advisory committee meetings and provide adequate notice to department staff and to other members.

(j) Reports. On or before October 1 of each year of its existence, each advisory committee shall submit a report to the department. Upon receipt of the report, the department shall evaluate the advisory committee's work, usefulness and costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities. Each report shall included the following:

(1) a summary or minutes of meetings conducted during the previous fiscal year (September 1-August 30);

(2) a summary of recommendations from the advisory committee; and

(3) other information determined by the advisory committee or the chairman to be appropriate and useful.

(k) Expenses. Members of each advisory committee will serve without compensation or reimbursement for travel or other out-of-pocket expenses.

(l) Rules. For each advisory committee appointed, the commission shall adopt rules that address the purpose of the advisory committee and membership qualifications. Such rules may also address the terms of service, operating procedures, and other standards to ensure the effectiveness of an advisory committee appointed under this subchapter.

(m) Rulemaking Committees. Notwithstanding other provisions of this subchapter, as authorized by §2001.031, Texas Government Code (the Administrative Procedure Act), the Director may, from time to time, appoint ad hoc committees of experts or interested persons or representatives of the public to advise the Department about contemplated rulemaking. Members of such committees shall serve at

the will of the Director and shall serve without compensation. Committees appointed under this subsection shall continue for no longer than one year, unless extended by the Director.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 23, 2009.

TRD-200904829
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: November 12, 2009
Proposal publication date: July 17, 2009
For further information, please call: (512) 389-4775

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CHAPTER 65. WILDLIFE
SUBCHAPTER K. RAPTOR PROCLAMATION

31 TAC §65.261

The Texas Parks and Wildlife Commission adopts an amendment to §65.261, concerning Applicability, without changes to the proposed text as published in the July 24, 2009, issue of the *Texas Register* (34 TexReg 4853).

The amendment adopts federal falconry regulations by reference and clarifies that the federal regulations control in instances where the department's rules conflict by being less restrictive than the federal regulations.

The practice of falconry is regulated at both the state and federal levels. The federal authority to regulate falconry is derived from the Migratory Bird Treaty Act (MBTA), 16 U.S.C. §703 et seq. The MBTA authorizes the states to adopt rules that are more restrictive than the federal rules, but not less restrictive, 16 U.S.C. §703.

Under current state rules and federal regulations, an applicant for a state falconry permit must apply for a federal falconry permit concurrently with the application for a state permit. The U.S. Fish and Wildlife Service (Service) has recently conducted a significant revision of federal falconry regulations. Part of that revision allows states that meet the federal falconry standards to handle falconry permitting with a single state permit application. In those states, the state becomes, in effect, an administrative agent of the Service. In states that do not participate in joint federal/state falconry certification, applicants must continue to apply for state and federal falconry permits separately. Texas falconers have expressed a strong desire to be administratively regulated by the Texas Parks and Wildlife Department (department) alone.

As a consequence of the new federal falconry regulations, the Texas falconry rules are at variance with the federal regulations in some instances. Federal regulations require federal certification of state rules by September 1, 2009 if the state is to take advantage of the joint permitting program. The amendment will function to temporarily eliminate conflicts between state rules and federal falconry regulations, which will allow for the certification of the state program by the Service.

The department received one comment opposing adoption of the proposed rule. The commenter stated that the rule "allows the fed to supersede any geographic specific, regulation or change of regulation." The commenter also stated that language should be inserted that "would allow Texas to modify the regulation as local conditions would make necessary." The department disagrees with the comment and responds that the primacy of federal authority with respect to the regulation of migratory birds is clear, and that the state may promulgate only those regulations that do not conflict with federal regulations. No changes were made as a result of the comments.

The department received 49 comments supporting adoption of the proposed rule.

The Texas Falconry Association commented in favor of adoption of the proposed rule.

No group or association commented in opposition to adoption of the proposed rule.

The amendment is adopted under Parks and Wildlife Code, Chapter 49, which authorizes the department to prescribe rules for the taking, capture, possession, propagation, transportation, export, import, and sale of raptors, the times and areas from which raptors may be taken or captured, and species that may be taken or captured; provide standards for possessing and housing raptors held under a permit; prescribe annual reporting requirements and procedures; prescribe eligibility requirements and fees for and issue any falconry, raptor propagation, or nonresident trapping permit; and require and regulate the identification of raptors held by permit holders.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 23, 2009.

TRD-200904830
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: November 12, 2009
Proposal publication date: July 24, 2009
For further information, please call: (512) 389-4775

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Credit Union Department

Title 7, Part 6

The Texas Credit Union Commission will review and consider for re-adoption, revision, or repeal Chapter 93, §§93.101 (Scope; Definitions; Severability), 93.201 (Party Status), 93.202 (Computation of Time), 93.203 (Ex Parte Communications), 93.204 (Presiding Officer or Body), 93.205 (Notice of Hearing), 93.206 (Default), 93.207 (Service), 93.208 (Delegation of Authority), 93.209 (Subpoenas), 93.210 (Protective Orders; Motions to Compel), 93.211 (Administrative Record), 93.212 (Proposal for Decision), 93.213 (Appearances and Representation), 93.214 (Recovery of Department Costs), 93.301 (Finality and Request for SOAH Hearing), 93.302 (Referral to ADR), 93.303 (Hearings of Applications to Incorporate, Amend Bylaws, or Merge or Consolidate); 93.304 (Appeals of Applications for Certificates of Authority), 93.305 (Appeals of All Other Applications for which no Specific Procedure is provided by this Title), 93.401 (Appeals of Cease and Desist Orders and Orders of Removal), 93.402 (Stays), 93.501 (Request for Hearing to Appeal an Order of Conservation), 93.502 (Retention of Attorney), 93.601 (Motion for Appeal to the Commission), 93.602 (Decision by the Commission), 93.603 (Oral Arguments before the Commission), 93.604 (Motion for Reconsideration), 93.605 (Final Decisions and Appeals), and Chapter 91, §91.209 (Reports and Charges for Late Filing) of Title 7, Part 6 of the Texas Administrative Code in preparation for the Commission's Rule Review as required by Section 2001.039, Government Code.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Credit Union Department.

Comments or questions regarding these rules may be submitted in writing to, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699, or electronically to info@tcud.state.tx.us. The deadline for comments is November 30, 2009.

The Commission also invites your comments on how to make these rules easier to understand. For example:

* Do the rules organize the material to suit your needs? If not, how could the material be better organized?

* Do the rules clearly state the requirements? If not, how could the rule be more clearly stated?

* Do the rules contain technical language or jargon that isn't clear? If so, what language requires clarification?

* Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

* Would more (but shorter) sections be better in any of the rules? If so, what sections should be changed?

Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption by the Commission.

TRD-200904812
Harold E. Feeney
Commissioner
Credit Union Department
Filed: October 22, 2009

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State Board for Educator Certification

Title 19, Part 7

The State Board for Educator Certification (SBEC) proposes the review of Title 19, Texas Administrative Code (TAC), Chapter 244, Certificate of Completion of Training for Appraisers, pursuant to the Texas Government Code, §2001.039.

As required by the Texas Government Code, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 244 continue to exist. The comment period begins November 6, 2009, and ends following receipt of public comments on the rule review of 19 TAC Chapter 244 at the next regularly scheduled SBEC meeting to be held on February 5, 2010.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to sbecrules@tea.state.tx.us or faxed to (512) 463-0028. Comments should be identified as "SBEC Rule Review."

TRD-200904854
Jerel Booker
Associate Commissioner, Educator Quality and Standards, Texas Education Agency
State Board for Educator Certification
Filed: October 26, 2009

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §11.73

Table 1. Surface Mining and Reclamation Division Forms for Uranium Exploration

Form Number	Form Title	Creation or Last Revision Date	Rule Number (16 TAC § __) or Other Authority
SMRD-3U	Application to Conduct Uranium Exploration Activities by Drilling	Rev. 09/09	§11.132; §11.133
SMRD-5U	Application to Transfer a Uranium Exploration Permit	09/09	§11.135
SMRD-38U	Cased Exploration Well Completion Report	09/09	§11.139
SMRD-39U	Borehole Plugging Report	09/09	§11.139

Figure: 16 TAC §11.142(a)

Table 1. Groundwater Monitoring Parameters

Major Constituents	Minor Constituents	Trace Constituents	Radionuclides	Additional Parameters
Bicarbonate (HCO_3)	Boron (B)	Arsenic (As)	Radium 226	pH (field and lab)
Calcium (Ca)	Carbonate (CO_3)	Selenium (Se)	Gross Alpha	Temperature (field and lab)
Chloride (Cl)	Fluoride (F)		Gross Beta	Total alkalinity
Magnesium (Mg)	Iron (Fe) (Total and Dissolved)		Uranium (U)	Total Dissolved Solids (TDS)
Molybdenum (Mo)	Manganese (Mn) (total and dissolved)			Specific conductance
Sodium (Na)	Nitrate (NO_3) or Nitrate as (N)			
Sulfate (SO_4)	Potassium (K)			

Figure: 16 TAC §87.46(d)

Tier	Criteria	Total Inspection Frequency (includes both periodic and risk-based inspections)
Tier 1	Violation of the rules determined by the department to pose a potential economic harm to property. Repeated violations relating to unlicensed activity.	Once each year
Tier 2	A serious or repeated violation relating to documentation and records requirements. Failure to maintain required records. Serious or repeated violations relating to unlicensed activity.	Twice each year
Tier 3	Repeated, serious violations related to towing company technical requirements. A significant violation of notifications rules, particularly those that threaten economic harm. Significant or repeated violations relating to unlicensed activity.	Four times each year

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Notice of Request for Applications: Young Farmer Grant Program

Pursuant to the Texas Agricultural Code, §58.011, the Texas Department of Agriculture (TDA) is requesting applications for the Young Farmer Grant Program (YFGP). The YFGP is administered by TDA under the direction of the Texas Agricultural Finance Authority (TAFA). The purpose of this program is to provide financial assistance in the form of dollar-for-dollar matching grant funds to those persons 18 years or older, but younger than 46 years of age, who are engaged or will be engaged in creating or expanding an agricultural business in Texas.

Submission Dates/Locations. Forms required for submitting an application are available by accessing TDA's website at: www.TexasAgriculture.gov, or by emailing TAFA at finance@TexasAgriculture.gov. One hard copy and one electronic copy of the application in Microsoft Word format must arrive no later than **5:00 p.m. on December 4, 2009,** to one of the following:

Physical Address: Texas Department of Agriculture, Texas Agriculture Finance Authority, Attn: Allen Regehr, 1700 N. Congress Ave., 11th Floor, Austin, TX 78701. Phone No. (512) 936- 0273 or (512) 463-9932. Fax No. (888) 216-9867.

Mailing Address: Texas Department of Agriculture Texas Agriculture Finance Authority, Attn: Allen Regehr, P.O. Box 12847, Austin, TX 78711.

The electronic copy should be e-mailed to finance@TexasAgriculture.gov.

Proposals must set forth accurate and complete information as required by the RFA. Oral modifications will not be considered.

Evaluation Criteria: Proposals will be evaluated based on the evaluation criteria outlined in the RFA.

The TAFA board reserves the right to fully or partially fund any particular grant application, and to accept or reject any or all applications. TDA and TAFA are under no legal or other obligation to award a grant on the basis of a submitted application. Neither TDA nor TAFA will pay for any cost or expense incurred by applicant or any other entity in responding to the RFA, including, without limitation, compensation for the value of applicant's time or services incurred in responding to the RFA.

The complete RFA is posted on the TDA website at: www.TexasAgriculture.gov. To obtain a copy of the RFA, contact Allen Regehr at (512) 936-0273 or finance@TexasAgriculture.gov.

TRD-200904898
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: October 28, 2009

♦ ♦ ♦

Department of Assistive and Rehabilitative Services

DARS Seeks Recommendations at Public Hearings on ECI Family Cost Share

The Department of Assistive and Rehabilitative Services (DARS) Early Childhood Intervention Program (ECI) is reviewing its family cost-share policies due to implementation challenges such as increased need, limited funding, and changes in community resources for families.

Family cost share is a fee paid by families for certain DARS/ECI services when private or public insurance does not pay. The fee is based on a sliding scale and determined by the family's income and other factors.

DARS/ECI is soliciting early public input regarding revising policy for how families help pay for these services. Any changes in family cost share for DARS/ECI services should be equitable, consistent, and cost effective. All areas of family cost share are open for input; however, specific topics for comment include:

Collecting co-pays, deductibles, and/or co-insurance as required by insurance plans when billing insurance for services.

Eliminating the option for a six-month waiver that allows DARS/ECI programs to waive family cost-share fees if the family consents to allow their private insurance to be billed. Input is requested on other methods to encourage the use of private insurance and other alternative health payment methods.

Revising the sliding scale family cost-share system to:

Require verification of income if family wants to qualify for the sliding-scale fee;

Simplify the sliding-scale fee by reducing the number of categories;

Changing the sliding-scale fee from a monthly fee to a per-service fee.

To facilitate widespread public participation, DARS/ECI will hold hearings around the state, and members of the public also may submit comments in writing.

All hearings will be held from 4:00 p.m. - 7:00 p.m. Persons requiring special accommodations should call the DARS Inquiries Line at 1-800-628-5115, TDD/TTY 1-866-581-9328, or email their request to DARS.Inquiries@dars.state.tx.us at least 72 hours before the public hearing. Hearing dates and locations are:

November 9, 2009

Garland, Texas

Garland ISD Special Events Center

4999 Naaman Forest Blvd.

Garland, Texas

November 10, 2009

Katy, Texas

Morton Ranch High School

2100 Franz Road

Katy, Texas

November 12, 2009

Lubbock, Texas

Lubbock ISD Administration Offices East Building

Jay Gordon Room

1628 19th St.

Lubbock, Texas

November 13, 2009

Nacogdoches, Texas

Stephen F. Austin University

Multi-Media Room #2.106

1936 North St.

Nacogdoches, Texas

November 16, 2009

Corpus Christi, Texas

Education Service Center Region 2

Room 323

209 North Water St.

Corpus Christi, Texas

Written comments may be emailed by November 30, 2009, to ECI.Policy@dars.state.tx.us or mailed to:

Texas Department of Assistive and Rehabilitative Services

Division for Early Childhood Intervention Services

4900 N. Lamar, MC 3029

Austin, Texas 78751-2399

The links listed below provide additional information regarding Family Cost Share.

http://www.dars.state.tx.us/ecis/fcsfactsheet.shtml

http://www.dars.state.tx.us/ecis/FCSFeeScale.pdf

http://www.dars.state.tx.us/ecis/publications/FamilyCostShare.pdf

TRD-200904879
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Filed: October 28, 2009

♦ ♦ ♦

Office of the Attorney General

Notice of Settlement of a Texas Clean Air Act Enforcement Action

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Health and Safety Code and the Texas Water Code. Before the State may settle a judicial enforcement action, pursuant to the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Acts.

Case Title and Court: *Harris County Texas and State of Texas acting by and through the Texas Commission on Environmental Quality, a Necessary and Indispensable Party-Plaintiff v. MEMC Pasadena, Inc.;* Cause No. 2009-25440, in the 334th District Court of Harris County, Texas.

Nature of Defendant's Operations: Harris County filed this suit alleging violations of the Texas Clean Air Act. Defendant owns and operates a manufacturing facility near the Houston Ship Channel. On two occasions on July 2, 2008, Defendant created a nuisance condition by emitting particulate matter in such concentration as to violate the Texas Clean Air Act. Defendant also failed to document the emissions events in accordance with the Texas Administrative Code.

Proposed Agreed Final Judgment: The proposed settlement requires the Defendant to pay $15,625 in civil penalties to be divided equally between the State and Harris County. The Defendant will also pay the State and Harris County $2,000 each in attorney's fees.

For a complete description of the proposed settlement, the Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Anthony W. Benedict, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-200904869
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: October 27, 2009

♦ ♦ ♦

Request for Application for the No Kidding: Straight Talk from Teen Parents Replication Pilot Grant

The Office of Attorney General (OAG) is soliciting Texas nonprofit organizations to apply for funds to pilot the No Kidding: Straight Talk from Teen Parents Program. No Kidding is a school based program that educates youth on the rights, responsibilities and realities of parenting in an effort to promote parental responsibility and to encourage the appropriate use of child support services. The purpose of this grant is to support the development and expansion of No Kidding into new school districts and new communities around the state.

Applicable Funding Source for the No Kidding Replication Pilot Grant: The source of the funds is the biennial appropriation by the Texas Legislature to the Texas Child Support (Title IV-D) program. Section 231.002 of the Texas Family Code allows for the contracting of services for IV-D activities and Part 17 of Article 9 (section 17.04) of the General Appropriations Act gives the OAG the authority to issue these funds through a competitive grant process. The OAG makes no commitment that an application, once submitted, or a grant, once funded, will receive subsequent funding.

There are no American Recovery and Reinvestment funds involved in this grant and all funding is contingent upon appropriation of funds.

Eligibility Requirements:

Eligible Applicants: Only nonprofit agencies with 26 U.S.C. 501(c)(3) status are eligible to apply for a No Kidding Replication Pilot Grant.

Eligibility: The OAG will initially screen each application for eligibility. Applicants will be deemed ineligible if the application is submitted by an ineligible applicant or the application does not meet other requirements stated in the Request for Application (RFA) and the Application Packet.

How to obtain the Application Packet: E-mail Gilbert Chavez at gilbert.chavez@cs.oag.state.tx.us or call Gilbert at (512) 460-6430 to have an application packet sent to you through e-mail. A hardcopy application Packet will be mailed upon request.

Deadline for the Grant Application: Applications will be accepted through 5:00 p.m., January 1, 2010. Packets will be reviewed and scored as they are received. Applications missing any of the required elements as listed on the checklist will not be considered. Applications and/or attachments received after the deadline will not be considered.

We will accept applications one of two ways.

Option One: By Federal Express or by United Parcel Service (UPS), sent to:

Office of the Attorney General

Family Initiatives, Child Support Division

5500 E. Oltorf Street, MC 039

Austin, TX 78741

This office CANNOT accept United States Postal Service deliveries.

OR

Option Two: By e-mail to: Gilbert.Chavez@cs.state.tx.us; cc: marion.coleman@cs.oag.state.tx.us.

1. E-mail application as a:

a. read only file (with electronic signature); **or**

b. single PDF file.

Include all attachments (letters of cooperation, support letters, etc.)

2. Print out your sent e-mail and retain for your files-this is proof of timely submission in the event of server problems.

Maximum amount of Funding Available: The maximum amount of program funding is $50,000. There is no minimum amount of program funding.

Start Date and Length of Grant Contract Period: Grant funds for State Fiscal Year 2010 will be from February 1, 2010 to August 31, 2010. Grantees successfully performing program services may be eligible for funds into State Fiscal Year 2011.

Match Requirements: The amount of funds awarded will be determined based on a one-to-one match of newly acquired funds to expand or replicate the No Kidding model. Grants will be awarded based on successful application and on the condition that matching funds have been committed. Matching funds must be newly obtained and not a part of pre-existing funds dedicated to No Kidding or supplanted from other program services. In-kind funds for direct program costs (e.g. program staff, intern stipends, intern childcare) may be counted in the matching formula if the application clearly demonstrates this as funding resources redirected and solely dedicated to No Kidding operation.

Volunteer Requirements: There are no volunteer requirements and volunteer time does not qualify as in-kind funds for match.

Award Criteria: The OAG will make funding decisions that support the efficient and effective use of public funds. Scoring will be based on information provided by the applicant according to the following criteria. Funding decisions will be based on a competitive allocation method.

Organization's qualities: (15%) The organizational qualities of the applicant support the best practices of program replication. The application should demonstrate the organization's quality of fit with the No Kidding goals. These goals include supporting teen/young parents as peer educators and the ability to provide on-campus outreach and education services to middle and high school students on the rights, responsibilities and realities of being a parent.

Implementation plan: (70%) The applicant should demonstrate an understanding of issues relevant to the middle and high school population and provide a detailed implementation plan for replicating No Kidding. In addition, the application should demonstrate through signed letters of support/or Memorandums of Understanding (MOU) that the community and school district support program implementation.

Budget considerations: (15%) The budget should detail how the cost of program implementation will be shared among funding sources, represent efficient use of OAG funds, and demonstrate an understanding of the cost and budget requirements of No Kidding.

Prohibitions on uses of Grant Funds: OAG grant funds may not be used to support or pay costs of overtime, out-of-state travel, dues, or lobbying; any portion of the salary or any other compensation for an elected government official; the purchase of food and beverages except as allowed under Texas State Travel Guidelines; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; costs of travel that are unrelated to the direct delivery of services that support the OAG funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable cost set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures, or cost principles. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Packet.

OAG Contact Person: E-mail Gilbert Chavez regarding any questions about this application process at gilbert.chavez@cs.oag.state.tx.us.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-200904886
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: October 28, 2009

Request for Application for the No Kidding: Straight Talk from Teen Parents Training and Technical Assistance Provider

The Office of Attorney General (OAG) is soliciting organizations to apply to be the statewide Training and Technical Assistance (TTA) provider to assist the OAG in providing new and established No Kidding: Straight Talk from Teen Parents (No Kidding) sites with support and guidance in implementing the No Kidding program model. No Kidding is a school based program that educates youth on the rights, responsibilities and realities of parenting in an effort to promote parental responsibility and to encourage the appropriate use of child support services.

Applicable Funding Source for the No Kidding TTA provider: The source of the funds is the biennial appropriation by the Texas Legislature to the Texas Child Support (Title IV-D) program. Section 231.002 of the Texas Family Code allows for the use of IV-D funds and Part 17 of Article 9 (section 17.04) of the General Appropriations Act gives the OAG the authority to issue these funds through a competitive grant process. The OAG makes no commitment that an application, once submitted, or a grant, once funded, will receive subsequent funding.

There are no American Recovery and Reinvestment funds involved in this grant and all funding is contingent upon appropriation of funds.

Eligibility Requirements:

Eligible Applicants: Only local units of government, nonprofit agencies with 26 U.S.C. 501(c)(3) status and state agencies including universities are eligible to apply to be the No Kidding TTA provider.

Eligibility: The OAG will initially screen each application for eligibility. Applicants will be deemed ineligible if the application is submitted by an ineligible applicant or the application does not meet other requirements stated in the Request for Application (RFA) and the Application Packet.

How to obtain the Application Packet: E-mail Gilbert Chavez at gilbert.chavez@cs.oag.state.tx.us or call Gilbert at (512) 460-6430 to have an application packet sent to you through e-mail. A hardcopy application can be mailed upon request.

Deadline for the Grant Application: Applications will be accepted through 5:00 p.m., December 4, 2009. Applications missing any of the required elements as listed on the checklist will not be considered. Applications and/or attachments received after the deadline will not be considered.

Applications may be submitted one of two ways.

Option One: By Federal Express or by United Parcel Service (UPS), sent to:

Office of the Attorney General

Family Initiatives, Child Support Division

5500 E. Oltorf Street, MC 039

Austin, TX 78741

This office CANNOT accept United States Postal Service deliveries.

OR

Option Two: By e-mail to: Gilbert.Chavez@cs.state.tx.us; cc: marion.coleman@cs.oag.state.tx.us.

1. E-mail application as a:

a. read only file (with electronic signature);

or

b. single PDF file

Include all Attachments (letters of cooperation, support letters, etc.)

2. Print out your sent e-mail and retain for your files-this is proof of timely submission in the event of server problems.

Minimum and Maximum amount of Funding Available: For the initial grant contract period (term), the minimum amount of funding an applicant may apply for is $20,000 and the maximum amount is $120,000.

The amount of the award is determined solely by the OAG. The OAG may award a grant at an amount above or below the established funding level and is not obligated to fund a grant at the amount requested. Based on available funding, the grant contract may be amended for an additional term with an additional amount of funding at the sole discretion of the OAG.

Start Date and Length of Grant Contract Period: Grant funds for State Fiscal Year 2010 will be from January 1, 2010 to August 31, 2010. Grantees successfully performing program services may be eligible for funds proposed for State Fiscal Year 2011.

No Match Requirements: There is no match requirement for this funding opportunity.

Volunteer Requirements: There is no volunteer requirement.

Award Criteria: The OAG will make funding decisions that support the efficient and effective use of public funds. Scoring will be based on information provided by the applicant according to the following criteria. Funding decisions will be based on a competitive allocation method.

Organization's qualities: (25%) The organizational qualities of the applicant supports the activities of providing effective TTA to No Kidding sites across the state. The application should demonstrate the organization's experience and capacity in providing support to agencies around the state in effective program replication, resolving recruiting and training issues of peer educators, and experience with implementing school-based programs.

Implementation plan: (45%) The application should demonstrate an understanding for providing quality TTA services and propose a comprehensive implementation plan to provide assistance to multiple program sites. The application should also describe staffing considerations.

Budget considerations: (30%) The budget should detail how the cost of program implementation represents efficient use of OAG funds and demonstrate an understanding of the activities required by the TTA provider.

Prohibitions on uses of Grant Funds: OAG grant funds may not be used to support or pay costs of overtime, out-of-state travel, dues, or lobbying; any portion of the salary or any other compensation for an elected government official; the purchase of food and beverages except as allowed under Texas State Travel Guidelines; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; costs of travel that are unrelated to the direct delivery of services that support the OAG funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable cost set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures, or cost principles. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Packet.

OAG Contact Person: E-mail Gilbert Chavez regarding any questions about this application process at Gilbert.Chavez@cs.oag.state.tx.us.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-200904885
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: October 28, 2009

♦ ♦ ♦

Request for Applications for the Family Violence Education and Outreach: Training and Technical Assistance Provider

The Child Support Division (CSD) of the Office of the Attorney General (OAG) is soliciting applications from qualified Statewide non-profit organizations to utilize funds to provide: (1) assistance in developing domestic violence training resources for use with staff in the CSD; (2) assistance in developing child support training resources for use with staff in domestic violence programs and centers; (3) development of outreach and education materials about child support services for survivors of domestic violence; and (4) technical assistance to OAG - CSD and community based programs providing services to survivors of domestic violence.

Applicable Funding Source: The source of the funds is the biennial appropriation by the Texas Legislature to the Texas Child Support (Title IV-D) program. Section 231.002 of the Texas Family Code allows for the use of IV-D funds and Part 17 of Article 9 (section 17.04) of the General Appropriations Act gives the OAG the authority to issue these funds through a competitive grant process. The OAG makes no commitment that an application, once submitted, or a grant, once funded, will receive subsequent funding.

There are no American Recovery and Reinvestment funds involved in this grant and all funding is contingent upon appropriation of funds.

Eligibility Requirements: To be eligible, an applicant must (1) be a statewide non-profit organization exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code of 1986; and (2) have a primary purpose of supporting delivery of services to survivors of domestic violence. A statewide program is an entity that actively offers or provides services in six or more Council of Government "COG" regions.

The OAG will initially screen each application for eligibility. Applications will be deemed ineligible if the application is submitted by an ineligible applicant; the application is not filed in the manner and form required by the RFA or the Application Kit; the application is filed after the deadline established in the RFA or the Application Kit; or the application does not meet other requirements as stated in the RFA or the Application Kit.

How to Obtain Application Kit: The OAG will post the Application Kit on the OAG's official agency website at http://www.oag.state.tx.us/. Updates and other helpful reminders about the application process will also be posted at this location. Potential applicants are encouraged to refer to this site regularly.

Deadlines and Filing Instructions for the Grant Application: Refer to the Application Kit for the complete application requirements and instructions.

Deadline: The applicant must submit its application to the OAG and the OAG must receive the submitted application and all required attachments by November 30, 2009 at 5:00 p.m. CST to be considered timely filed.

Filing Instructions: To be considered filed, the Applicant must submit the application by e-mail to: michael.hayes@cs.oag.state.tx.us and cc: stephanie.chiarello@cs.oag.state.tx.us. The OAG will not consider an Application if it is not filed by the due date, November 30, 2009 at 5:00 p.m. CST.

Minimum and Maximum Amounts of Funding Available: For the initial grant contract period (term) the minimum amount of funding statewide programs may apply for is $20,000 and the maximum amount is $80,000.

The amount of the award is determined solely by the OAG. The OAG may award a grant at an amount above or below the established funding level and is not obligated to fund a grant at the amount requested. Based on available funding, the grant contract may be amended for an additional term with an additional amount of funding at the sole discretion of the OAG.

Start Date and Length of Grant Contract Period: The term of this grant contract is up to nine months from December 1, 2009 through August 31, 2010, subject to and contingent on funding and approval by the OAG. The OAG may, at its discretion, exercise the option to extend the contract period for an additional year. The OAG may base its decision for the second fiscal year funding amounts on the grantee's first year performance, including but not limited to: the timeliness and thoroughness of reporting, effective and efficient use of grant funds and the success of the project in meeting its goals.

No Match Requirements: There are no match requirements for this funding opportunity.

Volunteer Requirements: There are no volunteer requirements.

Award Criteria: The OAG will make funding decisions that support the efficient and effective use of public funds. Scoring components may include, but are not limited to, information provided by the applicant on the organization's capacity, infrastructure, current knowledge, efforts, expertise and experience, and on the proposed project activities and budget.

Prohibitions on Use of Grant Funds: OAG grant funds may not be used to support or pay the costs of overtime, dues, or lobbying; any portion of the salary or any other compensation for an elected government official; the purchase of food and beverages except as allowed under Texas State Travel Guidelines; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; out of state travel or costs of travel that are unrelated to the direct delivery of services that support the OAG funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures or cost principles. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Kit.

OAG Contact Person: Michael Hayes: michael.hayes@cs.oag.state.tx.us, (512) 460-6218

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-200904887
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: October 28, 2009

♦ ♦ ♦

Brazos Valley Council of Governments

Request for Proposals

Purchasing Solutions Alliance (PSA), acting on behalf of the Brazos Valley Council of Governments (BVCOG) and its Members, is soliciting proposals for Auxiliary Power Generators, Accessories and Services. Sealed proposals for RFP No. 09-103 will be accepted until 2:00 p.m., Friday, December 4, 2009. Any proposal received after the above closing time will be returned unopened.

A non-mandatory pre-proposal conference is scheduled at 10:00 a.m. C.S.T., Tuesday, November 17, 2009 in the Robertson Room located in

the Purchasing Solutions Alliance Office at 3991 East 29th St., Bryan, Texas. All potential Offerors are invited to attend.

Proposal requirements and specifications is on file and may be obtained at the offices of Purchasing Solutions Alliance (a program of the Brazos Valley Council of Governments) located at 3991 East 29th St., Bryan, Texas 77802. For information regarding the RFP, contact Michael Lucas, Senior Contract Officer at (979) 595-2801 Extension 2035 or by email at mlucas@bvcog.org.

PSA reserves the right to reject any or all proposals and to waive informalities and irregularities.

TRD-200904880
Tom Wilkinson
Executive Director
Brazos Valley Council of Governments
Filed: October 28, 2009

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of October 16, 2009, through October 22, 2009. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on October 28, 2009. The public comment period for this project will close at 5:00 p.m. on November 27, 2009.

FEDERAL AGENCY ACTIONS:

Applicant: Global Geophysical Services, Inc.; Location: The project is located within a 102-square-mile area that includes wetlands, uplands, and open water habitat within and adjacent to the Gulf Intracoastal Waterway, Galveston Bay, and the Gulf of Mexico on or near Bolivar Peninsula, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Flake, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 335355.988; Northing: 3258251. Project Description: The applicant proposes to conduct work within Section 404 and Section 10 waters of the United States utilizing air guns, vibroseis (land vibrating truck propagates signals into the earth), and shothole operational methodology as a source of energy for a 3-D seismic survey. CCC Project No.: 09-0250-F1. Type of Application: U.S.A.C.E. permit application # SWG-2009-00233 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: South Texas Housing Development Corporation; Location: The project is located in wetlands adjacent to the east shore of Laguna Madre, at the Bay Harbor Subdivision, off of Bay Harbor Cove Road, South Padre Island, Cameron County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Isabel NW, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 682569; Northing: 2891344. Project Description: The applicant proposes to fill a total of 0.445 acre of estuarine wetlands for the purpose of completing the Bay Harbor Subdivision additional at the end of the Bay Harbor Cove cul-de-sac. The proposed work would be used to fill three lots and an amenity area that includes a homeowner's swimming pool. The 0.445 acres of proposed wetland fill includes 0.16 acres of unauthorized fill material placed prior to 2002 for completion of the Bay Harbor Cove Road cul-de-sac. Onsite mitigation is proposed and involves constructing wetlands by lowering 0.445 acres of uplands located on adjoining land to the east on the south property line. CCC Project No.: 10-0013-F1. Type of Application: U.S.A.C.E. permit application #SWG-2002-02544 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above, including a copy of the consistency certifications for inspection, may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200904870
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: October 27, 2009

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Comptroller of Public Accounts

Certification of the Average Taxable Price of Gas and Oil

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined that the average taxable price of crude oil for reporting period September 2009, as required by Tax Code, §202.058, is $55.74 per barrel for the three-month period beginning on June 1, 2009, and ending August 31, 2009. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of September 2009, from a qualified Low-Producing Oil Lease, is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined that the average taxable price of gas for reporting period September 2009, as required by Tax Code, §201.059, is $2.87 per mcf for the three-month period beginning on June 1, 2009, and ending August 31, 2009. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of September 2009, from a qualified Low-Producing Gas Well, is eligible for 50% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

Inquiries should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-200904815

Martin Cherry
General Counsel
Comptroller of Public Accounts
Filed: October 22, 2009

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/02/09 - 11/08/09 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/02/09 - 11/08/09 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200904859
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: October 27, 2009

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 7, 2009**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 7, 2009**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: BERT SCHRANK, INC.; DOCKET NUMBER: 2009-1051-PST-E; IDENTIFIER: RN101661007; LOCATION: Hamilton, Hamilton County; TYPE OF FACILITY: property with three inactive underground storage tanks (USTs); RULE VIOLATED: 30 Texas Administrative Code (TAC) §334.54(c)(2), by failing to properly perform the temporary removal of an UST from service; and 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,608; ENFORCEMENT COORDINATOR: Brianna Carlson, (956) 425-6010; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: James Finch, Ricky Reed, Monty Smith, Todd Schultz, Gary Kelm, Milton Peterson, and Jimmy Lehmann dba Brandon-Irene Water Supply Corporation; DOCKET NUMBER: 2009-1242-PWS-E; IDENTIFIER: RN101437325; LOCATION: Hill County; TYPE OF FACILITY: public water supply (PWS); RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(v), by failing to provide emergency power that will deliver water at a rate of 0.35 gallons per minute (gpm) per connection; PENALTY: $500; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: Zia Wahab dba C Store; DOCKET NUMBER: 2009-0946-PST-E; IDENTIFIER: RN101433647; LOCATION: Grand Prairie, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to ensure that all USTs are monitored in a manner which will detect a release; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST; 30 TAC §334.42(i), by failing to inspect all sumps including the dispenser sumps, manways, overspill containers, or catchment basins associated with the UST system; 30 TAC §334.45(c)(3)(A), by failing to install an emergency shutoff valve (also known as shear or impact valve) on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser; 30 TAC §334.49(b)(2) and the Code, §26.3475(d), by failing to provide corrosion protection to all underground components of an UST system; 30 TAC §115.246(1) and (4) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for inspection; and 30 TAC §115.244(3) and THSC, §382.085(b), by failing to conduct monthly inspections of the Stage II vapor recovery system (VRS); PENALTY: $21,049; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: ConocoPhillips Company; DOCKET NUMBER: 2009-1156-AIR-E; IDENTIFIER: RN102495884; LOCATION: Borger, Hutchinson County; TYPE OF FACILITY: petroleum refining and natural gas processing plant; RULE VIOLATED: 30 TAC §101.20(3) and §116.715(a), Flexible Permit Number 9868A and PSD-TX-102M7, Special Condition (SC) Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $17,850; Supplemental Environmental Project (SEP) offset amount of $7,140 applied to Texas Association of Resource Conservation and Development Areas, Inc. (RC&D) - Clean School Buses; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(5) COMPANY: Consumers Water, Inc. dba Tall Cedars Mobile Home Subdivision; DOCKET NUMBER: 2009-1030-PWS-E; IDENTIFIER: RN101230282; LOCATION: Harris County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.45(b)(1)(C)(ii) and THSC, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; and 30 TAC §290.45(b)(1)(C)(iii) and THSC, §341.0315(c), by failing to provide a total service pump capacity of two gpm per connection; PENALTY: $2,040; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: City of Corpus Christi; DOCKET NUMBER: 2009-0974-MWD-E; IDENTIFIER: RN101610327; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010401004, Permit Conditions Number 2.d., and the Code, §26.121(a), by failing to prevent the unauthorized discharge of wastewater; PENALTY: $7,300; SEP offset amount of $7,300 applied to Coastal Bend Bays and Estuaries Program, Inc.; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(7) COMPANY: Chong C. Park dba Dans Long Point Texaco; DOCKET NUMBER: 2009-0854-PST-E; IDENTIFIER: RN102789815; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs; 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of inventory control records; 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; and 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the UST system; PENALTY: $9,414; ENFORCEMENT COORDINATOR: Wallace Myers (512) 239-6580; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Dhukani Investments, Inc. dba Easy Lane; DOCKET NUMBER: 2009-1097-PST-E; IDENTIFIER: RN105711873; LOCATION: Spring, Montgomery County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review; 30 TAC §115.242(9) and THSC, §382.085(b), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II VRS; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: $7,596; ENFORCEMENT COORDINATOR: Danielle Porras, (512) 239-2602; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: EASTEX HARDY PROPERTIES, LLC dba Diamond Foods; DOCKET NUMBER: 2009-1147-PST-E; IDENTIFIER: RN103051892; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: $2,118; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: E. I. du Pont de Nemours and Company; DOCKET NUMBER: 2009-1230-AIR-E; IDENTIFIER: RN100216035; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: industrial organic chemicals plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Federal Operating Permit (FOP) Number O-01961, General Terms and Conditions (GTC) and SC Number 16, Air Permit Number 4351, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.211(b) and THSC, §382.085(b), by failing to submit final reports in a timely manner; PENALTY: $26,448; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(11) COMPANY: Flint Hills Resources, LP; DOCKET NUMBER: 2009-0916-AIR-E; IDENTIFIER: RN100217389; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: 30 TAC §§101.20(3), 116.715(a), and 122.143(4), Air Permit Number 16989, SC Number 1, Air Permit Number O-01317, SC Number 16, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $18,275; SEP offset amount of $9,137 applied to South East Texas Regional Planning Commission - West Port Arthur Home Energy Efficiency Program; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3100; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(12) COMPANY: George Welch Custom Homes, LLC; DOCKET NUMBER: 2009-1656-WQ-E; IDENTIFIER: RN105794028; LOCATION: Rockwall, Rockwall County; TYPE OF FACILITY: builder; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: HAPPY CENTER, LLC; DOCKET NUMBER: 2009-1050-PST-E; IDENTIFIER: RN101906485; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; 30 TAC §334.8(c)(4)(C), by failing to submit an UST registration and self-certification form; and 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate; PENALTY: $8,625; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: Michael R. Horn; DOCKET NUMBER: 2009-1642-WOC-E; IDENTIFIER: RN103401709; LOCATION: Newton, Newton County; TYPE OF FACILITY: licensing; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(15) COMPANY: Syed N. Hyder; DOCKET NUMBER: 2009-0850-MWD-E; IDENTIFIER: RN102097789; LOCATION: Bryan, Brazos County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and §319.7(c) and TPDES Permit Number WQ0011778001, Monitoring and Reporting Requirements Num-

ber 3(b), by failing to maintain monitoring and reporting records for a period of three years; 30 TAC §305.125(1) and §319.7(c) and TPDES Permit Number WQ0011778001, Sludge Provisions, by failing to make readily available records of monitoring information related to sewage sludge use and disposal activities for five years; 30 TAC §305.125(1) and §319.11(a) and TPDES Permit Number WQ0011778001, Monitoring and Reporting Requirements Numbers 2(b) and 3(b), by failing to comply with the test procedures for the analysis of pollutants specified in 30 TAC §319.11; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0011778001, Operational Requirements Number 1, by failing to ensure that all systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1) and TPDES Permit Number WQ0011778001, Sludge Provisions, by failing to dispose of sludge in accordance with the permitted methods; and 30 TAC §305.125(1), (4), and (5), TPDES Permit Number WQ0011778001, Permit Condition 2(d), and the Code, §26.121(a)(1), by failing to prevent and mitigate the unauthorized discharge and accumulation of sludge in the receiving stream; PENALTY: $42,840; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(16) COMPANY: INEOS USA, LLC; DOCKET NUMBER: 2009-0089-MLM-E; IDENTIFIER: RN100210038; LOCATION: Port Lavaca, Calhoun County; TYPE OF FACILITY: organic chemical manufacturing; RULE VIOLATED: 30 TAC §305.125(1) and (5) and Hazardous Waste (HW) Permit Number 50143, Provision Number V.C.4.f., by failing to operate all components of the leachate collection/leak detection systems with less than 18 inches of leachate; 30 TAC §335.152(a)(1), 40 Code of Federal Regulations (CFR) §263.15(d), and HW Permit Number 50143, Provision Number II.A. and III.D., by failing to indicate on the inspection records all required information; 30 TAC §335.69(a)(1)(B) and 40 CFR §262.34(a)(1)(ii) and §265.193(c)(3), by failing to provide a hazardous waste tank with a built-in leak detection system; 30 TAC §305.125(1) and (5) and HW Permit Number 50143, Provision Number III.D., by failing to conduct required inspections at the frequency detailed in the permit; 30 TAC §335.112(a)(8) and 40 CFR §265.173(a) and (b), by failing to keep a container storing hazardous waste closed during storage, except when it is necessary to add or remove waste and failing to manage a container storing hazardous waste so as to not cause it to be opened, handled, or stored in a manner which may rupture the container or cause it to leak; the Code, §26.121(a), by failing to prevent an unauthorized discharge into or adjacent to water in the state; and 30 TAC §324.1 and 40 CFR §279.22(c)(1), by failing to clearly label containers storing used oil; PENALTY: $34,999; ENFORCEMENT COORDINATOR: John Shelton, (512) 239-2563; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(17) COMPANY: L & M Woodwaste Recycling, Inc.; DOCKET NUMBER: 2009-0851-MLM-E; IDENTIFIER: RN105659221; LOCATION: Austin, Travis County; TYPE OF FACILITY: recycling; RULE VIOLATED: 30 TAC §328.5(b), by failing to properly notify the executive director prior to the commencement of recycling operations; and 30 TAC §101.5 and THSC, §382.085(b), by failing to prevent dust emissions from impacting off property receptors and creating traffic hazards; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Ross Fife, (512) 239-2541; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(18) COMPANY: Lake Palo Pinto Area Water Supply Corporation; DOCKET NUMBER: 2009-1262-PWS-E; IDENTIFIER: RN101456911; LOCATION: Gordon, Palo Pinto County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.45(b)(2)(H) and THSC, §341.0315(c), by failing to provide emergency power that will deliver water at a rate of 0.35 gpm per connection in the event of the loss of normal power supply; PENALTY: $290; ENFORCEMENT COORDINATOR: Amanda Henry, (713) 767-3500; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Mirando City Water Supply Corporation; DOCKET NUMBER: 2009-0952-PWS-E; IDENTIFIER: RN101195360; LOCATION: Mirando City, Webb County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.45(b)(1)(C)(i) and THSC, §341.0315(c), by failing to provide a minimum well capacity of 0.6 gpm per connection; 30 TAC §290.45(b)(1)(C)(iv) and THSC, §341.0315(c), by failing to provide an elevated storage capacity of 100 gallons per connection; 30 TAC §290.46(f)(2) and (3)(A)(i)(III) and (ii)(III), by failing to provide facility records to commission personnel at the time of the investigation; 30 TAC §290.46(l), by failing to flush dead-end mains at monthly intervals; 30 TAC §290.44(d), by failing to operate the facility to maintain a minimum pressure of 35 pounds per square inch (psi) at all points within the distribution network at flow rates of at least 1.5 gpm per connection and a minimum pressure of 20 psi during emergencies; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and THSC, §341.0315(c), by failing to operate the disinfection equipment to maintain the residual disinfectant concentration in the water at least 0.2 milligrams per liter (mg/L) free chlorine; 30 TAC §290.41(c)(3)(A), by failing to obtain approval from the Executive Director prior to using a well as a PWS source; and 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system; PENALTY: $2,270; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(20) COMPANY: North Texas Municipal Water District; DOCKET NUMBER: 2009-1088-MWD-E; IDENTIFIER: RN102097177; LOCATION: Richardson, Dallas County; TYPE OF FACILITY: wastewater treatment system; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010257001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permit effluent limits for flow and ammonia-nitrogen (NH_3N); PENALTY: $5,600; SEP offset amount of $4,480 applied to Keep Texas Beautiful - Texas Waterways Cleanup Program; ENFORCEMENT COORDINATOR: Jeremy Escobar, (512) 239-1460; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: Luis Ornelas; DOCKET NUMBER: 2009-0941-LII-E; IDENTIFIER: RN105731830; LOCATION: Houston, Harris County; TYPE OF FACILITY: landscape business; RULE VIOLATED: 30 TAC §30.5(a) and §344.30(a)(1), Texas Occupations Code, §1903.251, and the Code, §37.003, by failing to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system; and 30 TAC §344.52(c), by failing to ensure the backflow prevention device is tested prior to placing an irrigation system in service; PENALTY: $1,945; ENFORCEMENT COORDINATOR: Ross Fife, (512) 239-2541; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(22) COMPANY: City of Palestine; DOCKET NUMBER: 2009-0817-PWS-E; IDENTIFIER: RN101384576; LOCATION: Palestine, Anderson County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.46(m)(4), by failing to maintain the sludge lagoons so that they are free of excessive solids; 30 TAC §290.46(m)(6), by failing to maintain all pumps, motors, valves, and other mechanical devices in good working condition; 30 TAC §290.42(f)(1)(E)(ii), by failing

to provide adequate containment for all liquid chemical storage tanks; 30 TAC §290.43(c)(8), by failing to maintain the exterior coating on the elevated storage tank in accordance with American Water Works Association (AWWA) standards; 30 TAC §290.42(d)(11)(F)(vi), by failing to install a atmospheric vacuum breaker or a reduced pressure principle backflow prevention assembly in the supply line for the surface filter wash system; 30 TAC §290.46(s)(1), by failing to calibrate the filter effluent controllers at least once every 12 months; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 30 days using chlorine solutions of known concentrations; 30 TAC §290.41(e)(5), by failing to enclose the raw water pump station and all appurtenances within an intruder-resistant fence; 30 TAC §290.44(h)(4), by failing to ensure that all backflow prevention assemblies which are installed to provide protection against health hazards are tested on an annual basis by a recognized backflow prevention assembly tester; 30 TAC §290.43(c), by failing to design and construct the concrete clearwell at the surface water treatment plant and the storage tank in strict accordance with AWWA requirements; 30 TAC §290.46(d)(2)(B) and §290.110(b)(4) and THSC, §341.0315(c), by failing to maintain a minimum disinfectant residual of 0.5 mg/L total chlorine throughout the distribution system; 30 TAC §290.46(f)(3)(D)(ii), by failing to maintain copies of the inspection reports for all water storage and pressure maintenance facilities on file and accessible for review during inspections; 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan; 30 TAC §290.46(n)(1), by failing to maintain as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank at the facility and to make the plans and specifications available to commission personnel; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices at the facility to ensure the good working condition and general appearance of its facilities and equipment; and 30 TAC §290.109(c)(1)(B), by failing to collect distribution coliform samples at locations specified in the facility's monitoring plan; PENALTY: $11,285; SEP offset amount of $11,285 applied to RC&D - Household Hazardous Waste Clean-Up; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(23) COMPANY: Paris Generation, LP; DOCKET NUMBER: 2009-0931-AIR-E; IDENTIFIER: RN100216555; LOCATION: Paris, Lamar County; TYPE OF FACILITY: electricity and steam generating plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(B), FOP Number O-00094, GTC, and THSC, §382.085(b), by failing to submit a semi-annual deviation report; PENALTY: $2,100; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(24) COMPANY: PVR Gas Resources, LLC; DOCKET NUMBER: 2009-1225-AIR-E; IDENTIFIER: RN100222785; LOCATION: near Spearman, Ochiltree County; TYPE OF FACILITY: natural gas processing plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C) and THSC, §382.085(b), by failing to submit a deviation report; PENALTY: $1,875; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3100; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(25) COMPANY: R & A Harris South, LP dba Intercontinental Motors; DOCKET NUMBER: 2008-0298-IWD-E; IDENTIFIER: RN101610970; LOCATION: Houston, Harris County; TYPE OF FACILITY: automobile dealership; RULE VIOLATED: 30 TAC §305.65 and §305.125(1) and the Code, §26.121(a), by failing to maintain authorization for the discharge of wastewater; PENALTY: $3,060; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(26) COMPANY: City of San Augustine; DOCKET NUMBER: 2009-1074-PWS-E; IDENTIFIER: RN103779302; LOCATION: San Augustine, San Augustine County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by exceeding the maximum contaminant level for total trihalomethanes; PENALTY: $705; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(27) COMPANY: Texas Parks and Wildlife Department; DOCKET NUMBER: 2009-1065-PWS-E; IDENTIFIER: RN101255545; LOCATION: Hamilton County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and THSC, §341.033(d), by failing to collect routine distribution water samples for coliform analysis; 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations in the distribution system; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and THSC, §341.0315(c), by failing to operate the disinfection equipment to maintain a minimum disinfectant residual of 0.2 mg/L of free chlorine; 30 TAC §290.43(d)(2), by failing to provide all facility's pressure tanks with an easily readable pressure gauge; 30 TAC §290.39(j), by failing to notify and obtain approval from the executive director prior to making any significant change or addition to the facility's production, treatment, storage, pressure maintenance, or distribution facilities; 30 TAC §290.41(c)(3)(J), by failing to provide a concrete sealing block extending at least three feet from the well casing in all directions, with a minimum thickness of six inches and sloped to drain away at not less than 0.25 inch per foot around the wellhead; 30 TAC §290.41(c)(3)(N), by failing to provide a flow measuring device for the facility's water well; 30 TAC §290.43(c)(3), by failing to provide an overflow for the facility's storage tank; 30 TAC §290.46(f), by failing to keep on file and make available for commission review water system records; and 30 TAC §290.43(d)(9), by failing to ensure that there are no more than three pressure tanks installed at any one site without prior approval of the executive director; PENALTY: $3,250; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(28) COMPANY: V & SS ENTERPRISES, L.L.C. dba Handi Stop 35; DOCKET NUMBER: 2009-1189-PST-E; IDENTIFIER: RN101781821; LOCATION: Houston, Fort Bend County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; 30 TAC §115.242(1)(C) and THSC, §382.085(b), by failing to upgrade the Stage II equipment to onboard refueling vapor recovery compatible systems; and 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II VRS in proper operating condition; PENALTY: $7,349; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(29) COMPANY: Valero Refining-Texas, L.P.; DOCKET NUMBER: 2009-1314-AIR-E; IDENTIFIER: RN100238385; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: oil and gas refining plant; RULE VIOLATED: 30 TAC §116.715(a), Flexible Permit Number 39142 and PSD-TX-822M2, SC Number 1, and THSC, §382.085(b), by failing to comply with permitted emissions limits; PENALTY: $10,000; SEP offset amount of $4,000 applied to RC&D - Clean School Buses; ENFORCEMENT COORDINATOR: Martina Kusniadi, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(30) COMPANY: Nazlin A. Virani; DOCKET NUMBER: 2009-0933-PST-E; IDENTIFIER: RN102713773; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: property with three inactive USTs; RULE VIOLATED: 30 TAC §334.7(d)(3), by failing to provide an amended registration for any change or additional information regarding the USTs; 30 TAC §334.49(c)(4)(C) and the Code, §26.3475(d), by failing to inspect and test the corrosion protection system for operability and adequacy of protection; 30 TAC §334.54(b)(2), by failing to maintain all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection; PENALTY: $8,196; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5800; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-200904871
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 27, 2009

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Notice of Availability of the Draft October 2009 Update to the Water Quality Management Plan

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the draft October 2009 Update to the Water Quality Management Plan for the State of Texas (draft WQMP update).

The Water Quality Management Plan (WQMP) is developed and promulgated in accordance with the requirements of federal Clean Water Act, §208. The draft WQMP update includes projected effluent limits of indicated domestic dischargers useful for water quality management planning in future permit actions. Once the commission certifies a WQMP update, the update is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission. The draft WQMP update may contain service area populations for listed wastewater treatment facilities, designated management agency information and total maximum daily load (TMDL) updates.

A copy of the draft October 2009 WQMP update may be found on the commission's Web site located at *http://www.tceq.state.tx.us/nav/eq/eq_wqmp.html*. A copy of the draft may also be viewed at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

Written comments on the draft WQMP update may be submitted to Nancy Vignali, Texas Commission on Environmental Quality, Water Quality Division, MC 150, P.O. Box 13087, Austin, Texas 78711-3087. Comments may also be faxed to (512) 239-4420, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be submitted no later than 5:00 p.m. on December 7, 2009. For further information, or questions, please contact Ms. Vignali at (512) 239-1303 or by e-mail at *nvignali@tceq.state.tx.us*.

TRD-200904868
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 27, 2009

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Notice of Comment Period and Announcement of Public Meeting on Proposed New Air Quality Standard Permits for Agricultural Facilities

The Texas Commission on Environmental Quality (TCEQ) is providing an opportunity for public comment and will conduct a public meeting to receive testimony concerning seven new air quality standard permits covering a variety of agricultural operations. The proposed standard permits could be used to authorize the following types of agricultural facilities: dry bulk fertilizer handling operations; peanut drying and handling operations; cotton gins and cotton burr grinders; feedmills, portable augers, and hay grinders; grain elevators, portable grain augers, and grain handling operations; polyphosphate blending operations; and anhydrous ammonia storage and distribution operations. These new standard permits are proposed for issuance under the Texas Clean Air Act, Texas Health and Safety Code, §382.05195, Standard Permit, and 30 Texas Administrative Code (30 TAC) Chapter 116, Subchapter F, Standard Permits.

PROPOSED STANDARD PERMITS

The proposed standard permits for agricultural facilities have been developed to provide a streamlined method of authorizing these types of operations while ensuring that human health and the environment are protected. The proposed standard permits could be used to authorize new or existing non-major sources meeting all applicable conditions of the relevant standard permit. The requirements of the proposed standard permits vary, but generally include a combination of operating requirements, control requirements, and distance limitations, which, in combination, would be protective of human health and welfare. Please refer to the individual standard permit summary documents for detailed information concerning each proposed standard permit.

Owners or operators of existing facilities that would be potentially covered by the new standard permits may continue to operate under any existing authorizations they hold, such as an applicable permit by rule under 30 TAC Chapter 106, Permits by Rule, or a permit under Chapter 116, Control of Air Pollution by Permits for New Construction or Modification. However, owners or operators of existing facilities may elect to replace their existing authorization with the applicable new standard permit, if the facility meets the applicable conditions of the standard permit. For those facilities that do not qualify for a standard permit, site-specific permitting will remain an option. In conjunction with the development of these agricultural standard permits, commission staff are considering certain changes to specific permits by rule in Chapter 106. Any changes to those permits by rule would be proposed in a separate action, if approved by the commission.

The New Source Review Program under Chapter 116 requires any person who plans to construct any new facility or to engage in the modification of any existing facility which may emit air contaminants into the air of the state to obtain a permit in accordance with §116.111, General Application, satisfy the *de minimis* criteria of §116.119, De Minimis Facilities or Sources, or satisfy the conditions of a standard permit, a flexible permit, or Permits by Rule before any actual work is begun on the facility. A standard permit authorizes the construction of new facilities or modification of existing facilities that are similar in terms of operations, processes, and emissions.

The proposed standard permits for agricultural facilities are subject to the procedural requirements of §116.603, Public Participation in Issuance of Standard Permits. These requirements include a 30-day public comment period and a public meeting to provide an additional opportunity for public comment. Any person is entitled to submit written or verbal comments regarding the proposed standard permits.

PUBLIC MEETING

A public meeting on the proposed new air quality standard permits for agricultural facilities will be held on December 10, 2009 at 9:30 a.m. at the Texas Commission on Environmental Quality, Building B, Room 201A, 12100 Park 35 Circle, Austin, Texas. The meeting will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion with the audience will not occur during the meetings; however, TCEQ staff will be available to discuss the standard permits 30 minutes prior to the meeting and staff will also answer questions after the meeting.

PUBLIC COMMENT AND INFORMATION

Copies of the proposed air quality standard permits for agricultural facilities may be obtained from the TCEQ web site at: *http://www.tceq.state.tx.us/permitting/air/nav/standard.html* or by contacting the Texas Commission on Environmental Quality, Office of Permitting and Registration, Air Permits Division, at (512) 239-1250. Comments may be mailed to Mr. Michael Wilhoit, Texas Commission on Environmental Quality, Office of Permitting and Registration, Air Permits Division, MC 163, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-1070. All comments should reference the appropriate standard permit(s) to which the comments apply. Comments must be received by December 15, 2009. To inquire about the submittal of comments or for further information, contact Mr. Wilhoit at (512) 239-1222. *Si desea información en Español, puede llamar al (800) 687-4040.*

Persons who have special communication or other accommodation needs who are planning to attend the public meeting should contact Mr. Wilhoit at (512) 239-1222. Requests should be made as far in advance as possible.

TRD-200904858
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 27, 2009

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Notice of Comment Period and Hearing on Draft Municipal Solid Waste Landfill General Operating Permit

The Texas Commission on Environmental Quality (TCEQ) is providing an opportunity for public comment and a notice and comment hearing (hearing) on the draft revisions to Municipal Solid Waste Landfill General Operating Permit (GOP) Number 517. The draft GOP contains revisions to codified applicable requirements including: the addition of codified federal requirements for spark and compression ignited internal combustion engines and stationary gas turbines; addition of affected counties in the Dallas/Fort Worth ozone nonattainment area; updating applicable requirements for air curtain incinerators; and the re-codification of rule citations of 30 Texas Administrative Code Chapter 117, Control of Air Pollution from Nitrogen Compounds.

The draft GOP is subject to a 30-day comment period. During the comment period, any person may submit written comments on the draft GOP. A hearing will be held in Austin on December 7, 2009, at 1:30 p.m. in Building B, Room 201A at the TCEQ complex located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, a TCEQ staff member will be available to discuss the draft GOP 30 minutes prior to the hearing and will also be available to answer questions after the hearing.

Copies of the draft GOP may be obtained from the TCEQ Web site at *http://www.tceq.state.tx.us/permitting/air/nav/air_genoppermits.html* or by contacting the TCEQ Office of Permitting and Registration, Air Permits Division at (512) 239-1250. Written comments may be mailed to Beecher Cameron, Texas Commission on Environmental Quality, Office of Permitting and Registration, Air Permits Division, MC 163, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-1070. All comments should reference the draft Municipal Solid Waste Landfill GOP. Comments must be received by 5:00 p.m. on December 11, 2009. For further information, contact Mr. Cameron at (512) 239-1495.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact the TCEQ at (512) 239-4000. Requests should be made as far in advance as possible.

TRD-200904857
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 27, 2009

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Notice of Correction to Default Order Number 1

In the October 2, 2009, issue of the *Texas Register* (34 TexReg 6881), the Texas Commission on Environmental Quality (commission) published a notice of Agreed Order Number, specifically Item Number 2. The reference to Kabani Corporation aka Silver Spring Enterprises, Inc dba Agha Convenience Store was submitted in error by the commission as Kabani Corporation dba Ahga Convenience Store.

For questions concerning this error, please contact Laurencia Fasoyiro at (713) 422-8914.

TRD-200904874
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 27, 2009

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 7, 2009**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper,

inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 7, 2009**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Ekram & Nasir Corporation dba Walnut Hill Valero; DOCKET NUMBER: 2009-0832-PST-E; TCEQ ID NUMBER: RN102355971; LOCATION: 2992 Walnut Hill Lane, Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; and 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative received training and instruction in the operation and maintenance of the Stage II vapor recovery system by successfully completing a training course approved by the TCEQ; PENALTY: $4,666; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Eluterio Elizondo; DOCKET NUMBER: 2008-0801-PST-E; TCEQ ID NUMBER: RN103992962; LOCATION: Highway 59 ten miles northwest of Freer, Duval County; TYPE OF FACILITY: former retail gasoline service station; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed update implementation date, three underground storage tanks (USTs) for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; 30 TAC §334.54(d)(2), by failing to ensure that any residue from stored regulated substances that remained in the temporarily out of service UST system did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity; and 30 TAC §334.54(b), by failing to maintain all piping, pump, manways, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; PENALTY: $2,625; STAFF ATTORNEY: Stephanie J. Frazee, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(3) COMPANY: First Baptist Church of Jonestown, Texas; DOCKET NUMBER: 2008-1880-PWS-E; TCEQ ID NUMBER: RN105518724; LOCATION: 19100 Farm-to-Market Road 1431, Jonestown, Travis County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(h)(1) and §290.46(a), by failing to obtain written approval from the Executive Director of plans and specifications of the start-up of a new public water system; 30 TAC §290.42(e)(3), by failing to provide disinfection equipment so that continuous and effective disinfection can be secured under all conditions; 30 TAC §290.46(e)(4)(A), by failing to employ a water operator with a Class "D" or higher license; 30 TAC §290.41(c)(3)(N), by failing to provide a flow-measuring device for the well to measure production yields and provide for the accumulation of water production data; 30 TAC §290.41(c)(3)(J), by failing to provide a well with a concrete sealing block extending a minimum of three feet from the exterior well casing in all directions; 30 TAC §290.41(c)(3)(K), by failing to provide a well casing vent with an opening that is covered with a 16-mesh or finer corrosion resistant screen, facing downward, elevated, and located as to minimize the drawing of contaminants into the well; 30 TAC §290.41(c)(3)(M), by failing to provide a suitable sampling cock on the discharge pipe of the well; 30 TAC §290.41(c)(3)(O), by failing to provide an intruder-resistant fence or lockable building to protect the facility's well; 30 TAC §290.45(d)(2)(A)(ii), by failing to provide a minimum pressure tank capacity of 220 gallons; and 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to collect routine coliform samples for the months of May - October 2008 and by failing to provide public notification of the failure to sample for the months of May - October, 2008; PENALTY: $5,070; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(4) COMPANY: Juan G. Rivas dba Exell Auto Service E. Fuel; DOCKET NUMBER: 2008-1038-PST-E; TCEQ ID NUMBER: RN101444404; LOCATION: 2401 Finley Road, Irving, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months and Stage II vapor space manifolding and dynamic back pressure test at least once every 36 months or upon major system replacement or modification, whichever occurs first; 30 TAC §115.242(1)(C) and (3)(A) and THSC, §382.085(b), by failing to upgrade the Stage II vapor recovery system to onboard refueling vapor recovery compatible systems; 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to maintain Stage II records at the station ordinarily manned during business hours, and make them immediately available for review upon request by agency personnel; 30 TAC §334.50(b)(1)(A), (d)(1)(B)(ii) and (iii)(I), and TWC, §26.3475(c)(1), by failing to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as a motor fuel; PENALTY: $13,071; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Kimball Hill Homes Austin, LP; DOCKET NUMBER: 2009-0056-WQ-E; TCEQ ID NUMBER: RN105519490; LOCATION: corner of United States Highway 290 and Ledgestone Drive, Hays County; TYPE OF FACILITY: multi-phased residential home construction site; RULES VIOLATED: TWC, §26.121(a)(2), by failing to prevent the unauthorized discharge of waste into or adjacent to water in the state; PENALTY: $30,000; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

TRD-200904875

Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 27, 2009

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 7, 2009.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 7, 2009.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Erasmo Aranda; DOCKET NUMBER: 2009-0849-LII-E; TCEQ ID NUMBER: RN105619886; LOCATION: 2880 Peavy Road, Dallas, Dallas County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: TWC, §37.003, Texas Occupations Code, §1903.251, and 30 TAC §30.5(b) and §344.30, by failing to refrain from advertising or representing himself to the public as a person who can perform services for which a license or registration is required when not possessing a current license or registration; PENALTY: $262; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Mark Lopez dba M&R Aggregates; DOCKET NUMBER: 2009-0088-MLM-E; TCEQ ID NUMBER: RN104609045; LOCATION: 7414 East United States Highway 83, Rio Grande City, Starr County; TYPE OF FACILITY: sand and gravel mining plant; RULES VIOLATED: 30 TAC §324.1 and 40 Code of Federal Regulations (CFR) §279.22(c), by failing to label a used oil container at the site with the words "Used Oil"; 30 TAC §324.6 and 40 CFR §279.22(d), by failing to clean up used oil that had spilled on the soil around the used oil container; Texas Health and Safety Code (THSC), §382.085(b), 30 TAC §116.115(b)(2)(E)(i) and (c), and Air Permit Number 75790, General Condition Number 7, and Special Conditions (SC) 4, 7A, B, and C, by failing to maintain a copy of the permit and records containing information and data sufficient to demonstrate compliance with the permit; THSC, §382.085(b), 30 TAC §116.115(c), and Air Permit Number 75790, SC 5A, by failing to have permanently mounted spray bars installed at all material transfer points and area-type water sprays installed at all stockpiles and active work areas; and THSC, §382.0518(a) and §382.085(b) and 30 TAC §116.110(a), by failing to obtain authorizations for three rock crushers; PENALTY: $32,025; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(3) COMPANY: Mike Norris; DOCKET NUMBER: 2009-0344-LII-E; TCEQ ID NUMBER: RN105624779; LOCATION: 1710 North Interstate Highway 35, San Marcos, Hays County; TYPE OF FACILITY: landscape irrigation business; RULES VIOLATED: 30 TAC §30.5 and §330.4, TWC, §37.003, and Texas Occupations Code, §1903.251, by failing to hold an irrigator license or registration prior to advertising or representing to the public that he could perform services for which a license or registration is required; PENALTY: $262; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

TRD-200904876
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 27, 2009

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Notice of Water Quality Applications

The following notices were issued on October 13, 2009 through October 23, 2009.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

FRANS BINNERT OSINGA for a New Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004863000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to convert and expand an existing 550 head dairy to a 2,000 head heifer replacement facility. The facility is located on the north side of Farm-to-Market Road 1476, approximately one quarter mile northwest of its intersection with US Highway 67/377 in Proctor in Comanche County, Texas.

SOMERVELL COUNTY WATER DISTRICT which proposes to operate the Somervell County Water Treatment Plant, has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No WQ0004877000, to authorize the discharge of micro-filtration membrane wastewater at a daily average flow not to exceed 150,000 gallons per day via Outfall 001. The facility is located on County Road 301, approximately one mile north of the intersection of

U. S. Highway 67 and County Road 301, near the City of Glen Rose, Somervell County, Texas 78043.

DEL MONTE CORPORATION which operates Del Monte Plant #250, has applied for a renewal of TCEQ Permit No. WQ0000546000, which authorizes the disposal of food processing wastewater and storm water via irrigation. This permit will not authorize a discharge of pollutants into water in the State. The facility and land application site are located on the west side of Farm-to-Market Road (FM) 393, approximately 0.1 mile north of U.S. Highway 83; the disposal facilities are located on the north side of FM 393. Irrigation tract No. 1 is owned by the permittee and a separate entity, and is located immediately northeast and east of the intersection of FM 393 and FM 1688. Irrigation tract No. 2 is owned by a separate company, and is located on the north side of FM 393 and is bisected by FM 3292. Irrigation tract No. 3 is owned by a separate entity, and is located immediately northwest of the intersection of Farm-to-Market Roads 393 and 1668. The wastewater ponds are located on the north side of FM 393, immediately west of Tract no. 2. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

REAGENT CHEMICAL AND RESEARCH INC which proposes to operate Reagent Chemical - Cresson, a hydrochloric acid solution transloading facility, has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004880000 to authorize the discharge of treated wastewaters generated from rinsing the exteriors of tank cars and tank trucks and treated storm water via Outfall 001 on an intermittent and flow variable basis. The facility is located at 11869 County Road 917, approximately 400 feet west of the intersection of County Road 917 and County Road 918, Cresson, Johnson County, Texas 76035.

CITY OF EMORY has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to TPDES Permit No. WQ0010082001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 200,000 gallons per day to a daily average flow not to exceed 300,000 gallons per day and relocate the Outfall. The facility is located on the west side of Willow Springs Road, approximately 0.5 mile south of the intersection of U.S. Highway 69 and State Highway 19 in Rains County, Texas 75440.

CITY OF GATESVILLE has applied for a major amendment to TPDES Permit No. WQ0010176004 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 1,000,000 gallons per day to an annual average flow not to exceed 1,500,000 gallons per day. The facility is located approximately 0.5 mile south of the intersection of U.S. Highway 84 and U.S. Business 36 in the City of Gatesville in Coryell County, Texas 76528.

THE CITY OF ODESSA has applied for a renewal of TPDES Permit No. WQ0010238002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 11,000,000 gallons per day. The facility is located at 9600 South County Road 1325, southeast of the City of Odessa, approximately four miles southeast of the intersection of Interstate Highway 20 and Loop 338, and approximately six miles east-southeast of the intersection of Interstate Highway 20 and U.S. Highway 385 in Midland County, Texas 79766.

CITY OF DAISETTA has applied for a renewal of TPDES Permit No. WQ0010736002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located on the City of Daisetta's east city limit line, approximately one mile east of Farm-to-Market Road 770 on East Pine Street in Liberty County, Texas 77533.

CITY OF EL CAMPO has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0010844001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,628,000 gallons per day. The facility is located at 201 East Thompson Street, approximately 700 feet east of U.S. Route 71 and 2,500 feet north of State Route 59 in Wharton County, Texas 77437.

MONTGOMERY COUNTY UTILITY DISTRICT NO 3 has applied for a major amendment to TPDES Permit No. WQ0011203001 to authorize relocation of Outfall 001. The current permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located approximately 600 feet southwest of the intersection of State Highway 105 and Marina Drive, approximately 8.5 miles west of Conroe, Texas in Montgomery County, Texas 77316.

CITY OF MEADOWLAKES has applied for a renewal of TCEQ Permit No. WQ0011439001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day via surface irrigation of 102 acres of a golf course. The current permit will authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 140,000 gallons per day via surface irrigation of 102 acres of a golf course. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located southwest of the City of Marble Falls and north of Lake Marble Falls, approximately one block south of the intersection of South 4th Street and Avenue R in Burnet County, Texas 78654.

TRAVIS VISTA WATER AND SEWER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0011531001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 6000 gallons per day. The facility is located at 4811 Park Lane, approximately 600 feet northwest of Farm-to-Market Road 620 and one mile east of Mansfield Dam in Travis County, Texas 78732.

THE CITY OF COLLEGE STATION has applied for a renewal of TPDES Permit No. WQ0013153001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 8,500 gallons per day. The facility is located approximately 2.2 miles northeast of the intersection of Rock Prairie Road and State Highway 6 in Brazos County, Texas 77845.

TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO 4 has applied for a renewal of TCEQ Permit No. WQ0014430001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day via surface irrigation of 220 acres of non-public access native rangeland in the Final Phase. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located approximately 13,000 feet west-northwest of the intersection of Mopac Expressway (Loop 1) and Loop 360 (Capital of Texas Highway) in Travis County, Texas 78735.

THE DEVEREUX FOUNDATION has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014951001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 24,000 gallons per day. The facility was previously permitted under TPDES Permit No. WQ0014281001, which expired February 01, 2009. The facility is located at 120 David Wade Drive, Victoria, approximately 1300 feet west of U.S. Highway 59 and approximately 12 miles southwest of downtown Victoria in Victoria County, Texas 77902.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200904897
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 28, 2009

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Texas Facilities Commission

Request for Proposals #303-0-10348

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Criminal Justice (TDCJ), announces the issuance of Request for Proposals (RFP) #303-0-10348. TFC seeks a ten (10) year lease of approximately 50,489 square feet of office space in Huntsville, Texas.

The deadline for questions is December 4, 2009, and the deadline for proposals is December 18, 2009, at 3:00 p.m. The award date is January 22, 2010. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=85718.*

TRD-200904878
Kay Molina
General Counsel
Texas Facilities Commission
Filed: October 27, 2009

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Request for Proposals #303-0-10583

The Texas Facilities Commission (TFC), on behalf of the Department of Assistive and Rehabilitative Services (DARS), announces the issuance of Request for Proposals (RFP) #303-0-10583. TFC seeks a five or ten year lease of approximately 4,615 square feet of office space in Garland, Dallas County, Texas.

The deadline for questions is November 13, 2009 and the deadline for proposals is December 4, 2009 at 3:00 p.m. The award date is January 20, 2010. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=85720.*

TRD-200904896
Kay Molina
General Counsel
Texas Facilities Commission
Filed: October 28, 2009

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Office of the Governor

Request for Applications for the Texas Border Gang Prevention Coordination Assistance Program

The Texas Legislature appropriated a one-time allocation from the Operators and Chauffeurs Fund to support programs that expand gang prevention efforts along the Texas-Mexico border.

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for projects that will adopt the Office of Juvenile Justice and Delinquency Prevention (OJJDP) Comprehensive Gang Model, a multistrategy, multidisciplinary approach that has proven to be effective in reducing gang activity. CJD's FY 2011 Texas Border Gang Prevention Coordination Assistance Program provides funding for localities to enhance coordination of Federal, state, and local resources in support of community partnerships implementing the following antigang strategies: primary prevention, secondary prevention, gang intervention, and targeted gang enforcement.

Purpose: The Texas Border Gang Prevention Coordination Assistance Program provides communities with funds to enhance the coordination of existing community-based gang prevention and intervention programs and strategies that are closely aligned with local law enforcement efforts. Effective coordination can help identify existing programs and resources and maximize their impact through information sharing, mutual referrals, joint case management, and collective action.

Goal: The program's goal is to strengthen coordination of existing resources and activities that support multiple complementary antigang strategies, thereby reducing gang activity in targeted communities. Awards will support coordination of community-based antigang initiatives that involve law enforcement as an essential partner. Other partners may include schools, social services, faith- and community-based organizations, and businesses.

Standards: Grantees must comply with the standards applicable to grant funding cited in the *Texas Administrative Code* (1 TAC Chapter 3), and all statutes, requirements, and guidelines applicable to this funding.

Funding Levels:

Minimum amount: None

Maximum: None

Match Requirement: None

Available Funding: Total available amount is $5,000,000

Prohibitions: Grant funds may not be used to support the following services, activities, and costs:

(1) proselytizing or sectarian worship;

(2) lobbying;

(3) any portion of the salary of, or any other compensation for, an elected or appointed government official;

(4) vehicles or equipment for government agencies that are for general agency use;

(5) weapons, ammunition, explosives or military vehicles;

(6) admission fees or tickets to any amusement park, recreational activity or sporting event;

(7) promotional gifts;

(8) food, meals, beverages, or other refreshments unless the expense is for a working event where full participation by participants man-

dates the provision of food and beverages and the event is not related to amusement and/or social activities in any way;

(9) membership dues for individuals;

(10) any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state or local funds (i.e., supplanting);

(11) fundraising;

(12) construction;

(13) medical services;

(14) transportation, lodging, per diem or any related costs for participants, when grant funds are used to develop and conduct training; and

(15) legal services for adult offenders.

Eligible Applicants:

(1) Units of local government

Entities qualifying for the Texas Border Gang Prevention Coordination Assistance Program must reside in the following counties:

Aransas;

Brazoria;

Brewster;

Brooks;

Calhoun;

Cameron;

Chambers;

Culberson;

Dimmit;

Duval;

El Paso;

Fort Bend;

Galveston;

Goliad;

Hardin;

Harris;

Hidalgo;

Hudspeth;

Jackson;

Jeff Davis;

Jefferson;

Jim Hogg;

Jim Wells;

Kennedy;

Kinney;

Kleberg;

La Salle;

Liberty;

Matagorda;

Maverick;

Nueces;

Orange;

Pecos;

Presidio;

Refugio;

San Patricio;

Starr;

Terrell;

Val Verde;

Victoria;

Webb;

Wharton;

Willacy;

Zapata; and

Zavala.

Eligibility Requirements:

(1) Eligible applicants are limited to one application; and

(2) Units of local government providing law enforcement services must be current on reporting Part I violent crime data to the Texas Department of Public Safety for inclusion in the annual Uniform Crime Report (UCR) and have been current in reporting UCR data for the three preceding years; and

(3) Units of local government must have a Data Universal Numbering System (DUNS) number assigned to its agency at http://fedgov.dnb.com/webform/displayHomePage.do; and

(4) Units of local government must be registered in the federal Central Contractor Registration (CCR) database at www.ccr.gov; and

(5) Applicants will design their approaches using the framework of the OJJDP Comprehensive Gang Model. This model encourages a multidisciplinary approach using five strategies:

Provision of Opportunities--Develop education, training and job opportunities.

Social Intervention--Provide crisis intervention, treatment, and referrals to social workers for at risk youth and their families.

Suppression--Use criminal justice interventions to target gang-involved youth.

Organizational Change and Development--Establish agreement among stakeholders about the gang problem and talk across traditional silos.

Community Mobilization--Involve community members, including former gang members, and the coordination of agencies, programs, and services.

Applicants are encouraged to review literature from OJJDP regarding the OJJDP Comprehensive Gang Model: Planning for Implementation at http://www.nationalgangcenter.gov/Content/Documents/Implementation-Manual/Implementation-Manual.pdf.

For more information on this initiative, please refer to Best Practices to Address Community Gang Problems at http://www.nationalgangcenter.gov/Content/Documents/Gang-Problems.pdf.

Project Period: Grant funds will support 18 month project awards beginning on March 1, 2010, and will expire on August 31, 2011.

Application Process: Applicants can access CJD's eGrants website at https://cjdonline.governor.state.tx.us to register and apply for funding.

Preferences: Preference will be given to applicants who demonstrate cost effective programs focused on a comprehensive and effective approach to services.

Closing Date for Receipt of Applications: All applications must be submitted via CJD's eGrants website on or before January 31, 2010.

Selection Process: Applications will be reviewed by CJD staff members or a review group selected by the executive director. CJD will make all final funding decisions based on eligibility, reasonableness, availability of funding, and cost-effectiveness.

Contact Person: If additional information is needed, contact Ryan Clinton at ryan.clinton@governor.state.tx.us or (512) 463-1919.

TRD-200904900
Kate Fite
Assistant General Counsel
Office of the Governor
Filed: October 28, 2009

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Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 17, 2009, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for Anesthesia. The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e) - (f), which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The proposed payment rates for Anesthesia are proposed to be effective January 1, 2010.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after November 3, 2009. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at meisha.scott@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to meisha.scott@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-200904899
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: October 28, 2009

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Public Notice

The Texas Health and Human Services Commission (HHSC) intends to submit to the Centers for Medicare and Medicaid Services an amendment to the Youth Empowerment Services (YES) program, which is a Medicaid Home and Community-Based Services waiver program under the authority of §1915(c) of the Social Security Act. The YES program is currently approved for the two year period beginning September 1, 2009, and ending July 31, 2011. The proposed effective date for the amendment is December 1, 2009.

This waiver program provides community-based services to children with severe emotional disturbances and their families, with a goal of reducing or preventing children's inpatient psychiatric treatment and the consequent removal from their families. The waiver program serves an estimate of up to 300 youth at any given time who are under age 19 and who are predicted to remain in the waiver program for 12 months. The waiver is limited to individuals residing in Bexar County and Travis County.

This amendment would change the waiver program implementation date from the previously planned effective date of September 1, 2009 to December 1, 2009.

HHSC is requesting that the waiver amendment be approved for the period beginning December 1, 2009 through November 30, 2011. This amendment maintains cost neutrality for waiver years 2009 through 2011.

To obtain copies of the proposed waiver amendment, interested parties may contact Christine Longoria by mail at Texas Health and Human Services Commission, P.O. Box 85200, mail code H-620, Austin, Texas 78708-5200, phone (512) 491-1152, fax (512) 491-1957, or by e-mail at Christine.Longoria@hhsc.state.tx.us.

TRD-200904888
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: October 28, 2009

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Public Notice

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed effective date for this amendment is November 6, 2009.

The proposed amendment would delete the provision for reinvestment under the Day Activity and Health Services Attendant Compensation Rate Enhancement effective November 6, 2009.

The proposed deletion of the provision for reinvestment is estimated to result in an aggregate annual savings of $29,492 for the remainder of FFY 2010, with approximately $20,600 in federal funds and approxi-

mately $8,892 in state general revenue. For FFY 2011, the proposed deletion of the provision for reinvestment is estimated to result in an aggregate savings of $32,720, with approximately $20,018 in federal funds and approximately $12,702 in state general revenue.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Pam McDonald by mail at Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1373; by facsimile at (512) 491-1998; or by e-mail at pam.mcdonald@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200904890
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: October 28, 2009

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Public Notice

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed effective date for this amendment is November 6, 2009.

The proposed amendment would delete the provision for reinvestment under the Primary Home Care Attendant Compensation Rate Enhancement effective November 6, 2009.

The proposed deletion of the provision for reinvestment is estimated to result in an aggregate annual savings of $293,423 for the remainder of FFY 2010, with approximately $204,956 in federal funds and approximately $88,467 in state general revenue. For FFY 2011, the proposed deletion of the provision for reinvestment is estimated to result in an aggregate savings of $325,531, with approximately $199,160 in federal funds and approximately $126,371 in state general revenue.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Pam McDonald by mail at Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1373; by facsimile at (512) 491-1998; or by e-mail at pam.mcdonald@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200904895
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: October 28, 2009

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Texas Department of Insurance

Company Licensing

Application to do business in the State of Texas by CAREMORE HEALTH PLAN OF TEXAS, INC., a domestic Health Maintenance Organization. The home office is in Dallas, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200904884
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: October 28, 2009

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Texas Lottery Commission

Instant Game Number 1195 "Fútbol"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1195 is "FÚTBOL". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1195 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 1195.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $200, $2,000 and $20,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1195 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$200	TWO HUND
$2,000	TWO THOU
$20,000	20 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00 or $200.

H. High-Tier Prize - A prize of $2,000 or $20,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1195), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1195-0000001-001.

K. Pack - A pack of "FÚTBOL" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of ticket 001 and the back of ticket 125. Configuration B will show the back of ticket 001 and the front of ticket 125.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "FÚTBOL" Instant Game No. 1195 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in

Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "FÚTBOL" Instant Game is determined once the latex on the ticket is scratched off to expose 23 (twenty-three) Play Symbols. If a player matches any of YOUR TEAM'S NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins the PRIZE shown for that number. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 23 (twenty-three) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 23 (twenty-three) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 23 (twenty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 23 (twenty-three) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No more than two (2) matching non-winning prize symbols on a ticket.

C. No duplicate WINNING NUMBERS play symbols on a ticket.

D. No duplicate non-winning YOUR TEAM'S NUMBERS play symbols on a ticket.

E. Non-winning prize symbols will never be the same as the winning prize symbol(s).

F. No prize amount in a non-winning spot will correspond with the YOUR TEAM'S NUMBERS play symbol (i.e. 5 and $5).

G. The top prize will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "FÚTBOL" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00 or $200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a $50.00 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "FÚTBOL" Instant Game prize of $2,000 or $20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In

the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "FÚTBOL" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "FÚTBOL" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "FÚTBOL" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 1195. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1195 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	643,200	12.50
$4	739,680	10.87
$5	96,480	83.33
$10	112,560	71.43
$20	48,240	166.67
$50	37,051	217.00
$200	6,499	1,237.11
$2,000	40	201,000.00
$20,000	8	1,005,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.78. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1195 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1195, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200904902
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: October 28, 2009

♦ ♦ ♦

Instant Game Number 1224 "$50,000 Riches"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1224 is "$50,000 RICHES". The play style is "key number match with auto win and win all".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1224 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 1224.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, DOLLAR BILL SYMBOL, COIN SYMBOL, $5.00, $7.00, $10.00, $15.00, $20.00, $40.00, $50.00, $100, $500, $2,000 and $50,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1224 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
DOLLAR BILL SYMBOL	WINALL
COIN SYMBOL	COIN
$5.00	FIVE$
$7.00	SEVEN$
$10.00	TEN$
$15.00	FIFTN

$20.00	TWENTY
$40.00	FORTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$2,000	TWO THOU
$50,000	50 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100 or $500.

H. High-Tier Prize - A prize of $2,000 or $50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1224), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1224-0000001-001.

K Pack - A pack of "$50,000 RICHES" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "$50,000 RICHES" Instant Game No. 1224 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "$50,000 RICHES" Instant Game is determined once the latex on the ticket is scratched off to expose 44 (forty-four) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins the PRIZE shown for that number. If a player reveals a "coin" play symbol, the player wins the PRIZE shown for that symbol instantly. If a player reveals a "dollar bill" play symbol, the player WINS ALL 20 PRIZES instantly! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 44 (forty-four) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 44 (forty-four) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 44 (forty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 44 (forty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No more than four (4) matching non-winning prize symbols will appear on a ticket.

C. The "DOLLAR BILL" (win all) play symbol will only appear as dictated by the prize structure.

D. When the "DOLLAR BILL" (win all) play symbol appears, there will be no occurrence of any YOUR NUMBERS play symbols matching to any of the WINNING NUMBERS play symbols.

E. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

F. No duplicate WINNING NUMBERS play symbols on a ticket.

G. Non-winning prize symbols will never be the same as the winning prize symbol(s).

H. No prize amount in a non-winning spot will correspond with the play symbol (i.e. 20 and $20).

I. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "$50,000 RICHES" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "$50,000 RICHES" Instant Game prize of $2,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$50,000 RICHES" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "$50,000 RICHES" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "$50,000 RICHES" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or

within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,080,000 tickets in the Instant Game No. 1224. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1224 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	566,400	12.50
$10	660,800	10.71
$15	283,200	25.00
$20	283,200	25.00
$50	44,073	160.64
$100	13,452	526.32
$500	1,141	6,205.08
$2,000	125	56,640.00
$50,000	7	1,011,428.57

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.82. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1224 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1224, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200904903
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: October 28, 2009

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Instant Game Number 1225 "Stacks of Cash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1225 is "STACKS OF CASH". The play style is "key number match with doubler and tripler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1225 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 1225.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, DOUBLE DOLLAR SYMBOL, TRIPLE DOLLAR SYMBOL, $2.00, $3.00, $5.00, $10.00, $15.00, $20.00, $30.00, $60.00, $200, $1,000 and $20,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1225 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
DOUBLE DOLLAR SYMBOL	DBL
TRIPLE DOLLAR SYMBOL	TPL
$2.00	TWO$
$3.00	THREE$
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$30.00	THIRTY
$60.00	SIXTY
$200	TWO HUND
$1,000	ONE THOU
$20,000	20 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $2.00, $3.00, $5.00, $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $30.00, $60.00 or $200.

H. High-Tier Prize - A prize of $1,000 or $20,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1225), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1225-0000001-001.

K. Pack - A pack of "STACKS OF CASH" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B. C and D configuration.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "STACKS OF CASH" Instant Game No. 1225 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "STACKS OF CASH" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either of the WINNING NUMBERS play symbols, the player wins PRIZE shown for that number. If a player reveals a "double dollar" play symbol, the player wins DOUBLE the PRIZE shown for that symbol. If a player reveals a "triple dollar" play symbol, the player wins TRIPLE the PRIZE shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "$$" (doubler) and "$$$" (tripler) play symbols will only appear on intended winning tickets and only as dictated by the prize structure.

C. No more than two matching non-winning prize symbols will appear on a ticket.

D. No duplicate WINNING NUMBERS play symbols on a ticket.

E. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and $5).

H. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "STACKS OF CASH" Instant Game prize of $2.00, $3.00, $5.00, $10.00, $15.00, $20.00, $30.00, $60.00 or $200, a

claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $60.00 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "STACKS OF CASH" Instant Game prize of $1,000 or $20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "STACKS OF CASH" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "STACKS OF CASH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "STACKS OF CASH" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 1225. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1225 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	578,880	13.89
$3	707,520	11.36
$5	160,800	50.00
$10	112,560	71.43
$15	48,240	166.67
$20	64,320	125.00
$30	26,800	300.00
$60	19,899	404.04
$200	4,690	1,714.29
$1,000	134	60,000.00
$20,000	8	1,005,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.66. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1225 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1225, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: October 28, 2009

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Instant Game Number 1226 "Totally Topaz 7's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1226 is "TOTALLY TOPAZ 7'S". The play style is "key number match with multiplier".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1226 shall be $7.00 per ticket.

1.2 Definitions in Instant Game No. 1226.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 7 SYMBOL, $7.00, $10.00, $15.00, $20.00, $40.00, $50.00, $100, $500, $2,000 and $77,000. The possible gold play symbols are: 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 7 SYMBOL and "TOPAZ" SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1226 - 1.2D

PLAY SYMBOL	CAPTION
1 (black)	ONE
2 (black)	TWO
3 (black)	THR
4 (black)	FOR
5 (black)	FIV
6 (black)	SIX
8 (black)	EGT
9 (black)	NIN
10 (black)	TEN
11 (black)	ELV
12 (black)	TLV
13 (black)	TRN
14 (black)	FTN
15 (black)	FFN
16 (black)	SXN
18 (black)	ETN
19 (black)	NTN
20 (black)	TWY
21 (black)	TWON
22 (black)	TWTO
23 (black)	TWTH
24 (black)	TWFR
25 (black)	TWFV
26 (black)	TWSX
28 (black)	TWET
29 (black)	TWNI
30 (black)	TRTY
31 (black)	TRON
32 (black)	TRTO
33 (black)	TRTH
34 (black)	TRFR
35 (black)	TRFV
36 (black)	TRSX
38 (black)	TRET
39 (black)	TRNI
40 (black)	FRTY
7 SYMBOL (black)	WIN
1 (gold)	ONE
2 (gold)	TWO
3 (gold)	THR
4 (gold)	FOR
5 (gold)	FIV
6 (gold)	SIX
8 (gold)	EGT
9 (gold)	NIN
10 (gold)	TEN

11 (gold)	ELV
12 (gold)	TLV
13 (gold)	TRN
14 (gold)	FTN
15 (gold)	FFN
16 (gold)	SXN
18 (gold)	ETN
19 (gold)	NTN
20 (gold)	TWY
21 (gold)	TWON
22 (gold)	TWTO
23 (gold)	TWTH
24 (gold)	TWFR
25 (gold)	TWFV
26 (gold)	TWSX
28 (gold)	TWET
29 (gold)	TWNI
30 (gold)	TRTY
31 (gold)	TRON
32 (gold)	TRTO
33 (gold)	TRTH
34 (gold)	TRFR
35 (gold)	TRFV
36 (gold)	TRSX
38 (gold)	TRET
39 (gold)	TRNI
40 (gold)	FRTY
7 SYMBOL (gold)	DOUBLE
TOPAZ SYMBOL (gold)	WINALL
$7.00 (black)	SEVEN$
$10.00 (black)	TEN$
$15.00 (black)	FIFTN
$20.00 (black)	TWENTY
$40.00 (black)	FORTY
$50.00 (black)	FIFTY
$100 (black)	ONE HUND
$500 (black)	FIV HUND
$2,000 (black)	TWO THOU
$77,000 (black)	77 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $7.00, $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100 or $500.

H. High-Tier Prize - A prize of $2,000 or $77,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1226), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1226-0000001-001.

K. Pack - A pack of "TOTALLY TOPAZ 7'S" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "TOTALLY TOPAZ 7'S" Instant Game No. 1226 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "TOTALLY TOPAZ 7'S" Instant Game is determined once the latex on the ticket is scratched off to expose 44 (forty-four) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins the PRIZE shown for that number. If a player reveals a "BLACK 7" symbol, the player wins the PRIZE shown for that symbol. If a player reveals a "GOLD 7" symbol, the player wins DOUBLE the PRIZE shown for that symbol. If a player reveals a "GOLD TOPAZ" symbol, the player WINS ALL 20 prizes instantly! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 44 (forty-four) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 44 (forty-four) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 44 (forty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 44 (forty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. The "GOLD 7" (doubler) play symbol will only appear as dictated by the prize structure.

C. The "BLACK 7" (auto win) play symbol will never appear more than once on winning tickets.

D. The "GOLD TOPAZ" (win all) play symbol will only appear as dictated by the prize structure.

E. When the "GOLD TOPAZ" (win all) play symbol appears, there will be no occurrence of any YOUR NUMBERS play symbols matching to any of the WINNING NUMBERS play symbols.

F. There will be a minimum of 4 and a maximum of 12 gold play symbols on every ticket unless otherwise restricted by the prize structure.

G. No more than four (4) matching non-winning prize symbols will appear on a ticket.

H. No duplicate non-winning YOUR NUMBERS play symbols on a ticket regardless of color.

I. No duplicate WINNING NUMBERS play symbols on a ticket.

J. Non-winning prize symbols will never be the same as the winning prize symbol(s).

K. YOUR NUMBER play symbols matching WINNING NUMBER play symbols will be a win, regardless of color.

L. No prize amount in a non-winning spot will correspond with the play symbol (i.e. 20 and $20).

M. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "TOTALLY TOPAZ 7'S" Instant Game prize of $7.00, $10.00, $15.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TOTALLY TOPAZ 7'S" Instant Game prize of $2,000 or $77,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TOTALLY TOPAZ 7'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "TOTALLY TOPAZ 7'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "TOTALLY TOPAZ 7'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 1226. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1226 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$7	480,000	12.50
$10	560,000	10.71
$15	240,000	25.00
$20	280,000	21.43
$50	80,000	75.00
$100	42,500	141.18
$500	3,050	1,967.21
$2,000	81	74,074.07
$77,000	6	1,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.56. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1226 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1226, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200904905
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: October 28, 2009

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Instant Game Number 1255 "Jumbo Bucks III"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1255 is "JUMBO BUCKS III". The play style is "key number match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1255 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 1255.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, JUMBO SYMBOL, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $200, $2,000 and $50,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1255 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
JUMBO SYMBOL	WINX2
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$200	TWO HUND
$2,000	TWO THOU
$50,000	50 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00 or $200.

H. High-Tier Prize- A prize of $2,000 or $50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1255), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1255-0000001-001.

K. Pack - A pack of "JUMBO BUCKS III" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of ticket 001 and the back of ticket 125. Configuration B will show the back of ticket 001 and the front of ticket 125.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "JUMBO BUCKS III" Instant Game No. 1255 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "JUMBO BUCKS III" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either SERIAL NUMBER play symbol, the player wins PRIZE shown for that number. If a player reveals a "JUMBO" play symbol, the player wins DOUBLE the PRIZE shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "JUMBO" (doubler) play symbol will only appear on intended winning tickets and only as dictated by the prize structure.

C. No more than two matching non-winning prize symbols will appear on a ticket.

D. No duplicate SERIAL NUMBERS play symbols on a ticket.

E. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and $5).

H. The instant top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "JUMBO BUCKS III" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, or $200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a $50.00 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "JUMBO BUCKS III" Instant Game prize of $2,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by

the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "JUMBO BUCKS III" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. The JUMBO BUCKS III Instant Game will have four (4) Second-Chance Drawings for prizes.

1. Non-winning JUMBO BUCKS III scratch-off tickets may be entered into one of the drawings. A valid Game entry shall consist of exactly five (5) non-winning Texas Lottery $2 JUMBO BUCKS III scratch-off tickets mailed in an envelope with proper postage affixed and bear a Texas postmark. Entries with less than five (5) or more than five (5) non-winning Texas Lottery $2 JUMBO BUCKS III scratch-off tickets, winning Texas Lottery $2 JUMBO BUCKS III scratch-off tickets or tickets other than the Texas Lottery $2 JUMBO BUCKS III scratch-off tickets will be disqualified. Entries showing evidence of alteration to the claimant name or address fields will be disqualified.

2. Only one winner per household per drawing.

3. A player must be 18 years of age or older to enter the second-chance drawings.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "JUMBO BUCKS III" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "JUMBO BUCKS III" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 30,000,000 tickets in the Instant Game No. 1255. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1255 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	2,880,000	10.42
$4	2,940,000	10.20
$5	360,000	83.33
$10	360,000	83.33
$20	180,000	166.67
$50	142,500	210.53
$200	25,500	1,176.47
$2,000	51	588,235.29
$50,000	20	1,500,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.36. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1255 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1255, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200904906
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: October 28, 2009

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Instant Game Number 1256 "Giant Jumbo Bucks III"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1256 is "GIANT JUMBO BUCKS III". The play style is "key number match with auto win (5X)".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1256 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 1256.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, JUMBO SYMBOL, $5.00, $10.00, $15.00, $20.00, $25.00, $40.00, $50.00, $100, $500, $1,000, and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1256 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
JUMBO SYMBOL	WINX5
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$25.00	TWY FIV

$40.00	FORTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$100,000	HUN THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00, $15.00, or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100 or $500.

H. High-Tier Prize - A prize of $1,000, $5,000 or $100,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1256), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1256-0000001-001.

K. Pack - A pack of "GIANT JUMBO BUCKS III" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "GIANT JUMBO BUCKS III" Instant Game No. 1256 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "GIANT JUMBO BUCKS III" Instant Game is determined once the latex on the ticket is scratched off to expose 44 (forty-four) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any SERIAL NUMBER play symbol, the player wins PRIZE shown for that number. If a player reveals a "JUMBO" play symbol, the player wins 5 TIMES the PRIZE shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 44 (forty-four) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 44 (forty-four) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 44 (forty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 44 (forty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "JUMBO" (win x 5) play symbol will only appear on intended winning tickets and only as dictated by the prize structure.

C. No more than three (3) matching non-winning prize symbols will appear on a ticket.

D. No duplicate SERIAL NUMBERS play symbols on a ticket.

E. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e., 5 and $5).

H. The instant win top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "GIANT JUMBO BUCKS III" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "GIANT JUMBO BUCKS III" Instant Game prize of $1,000, $5,000 or $100,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "GIANT JUMBO BUCKS III" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. The GIANT JUMBO BUCKS III Instant Game will have four (4) Second-Chance Drawings for prizes.

1. Non-winning GIANT JUMBO BUCKS III scratch-off tickets may be entered into one of the drawings. A valid Game entry shall consist of exactly three (3) non-winning Texas Lottery $5 Giant Jumbo Bucks III scratch-off tickets mailed in an envelope with proper postage affixed and bear a Texas postmark. Entries with less than three (3) or more than three (3) non-winning Texas Lottery $5 Giant Jumbo Bucks III scratch-off tickets, winning Texas Lottery $5 Giant Jumbo Bucks III scratch-off tickets or tickets other than the Texas Lottery $5 Giant Jumbo Bucks III scratch-off tickets will be disqualified. Entries showing evidence of alteration to the claimant name or address fields will be disqualified.

2. Only one winner per household per drawing.

3. A player must be 18 years of age or older to enter the second-chance drawings.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "GIANT JUMBO BUCKS III" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "GIANT JUMBO BUCKS III" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 20,160,000 tickets in the Instant Game No. 1256. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1256 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	2,419,200	8.33
$10	1,612,800	12.50
$15	604,800	33.33
$20	470,400	42.86
$50	268,800	75.00
$100	33,600	600.00
$500	3,192	6,315.79
$1,000	1,176	17,142.86
$5,000	20	1,008,000.00
$100,000	20	1,008,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.72. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1256 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1256, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200904907

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: October 28, 2009

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Instant Game Number 1257 "Mega Jumbo Bucks III"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1257 is "MEGA JUMBO BUCKS III". The play style is "key number match with multiplier (10X)".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1257 shall be $10.00 per ticket.

1.2 Definitions in Instant Game No. 1257.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, JUMBO SYMBOL, $10.00, $20.00, $50.00, $100, $200, $500, $1,000, $2,500 and $250,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1257 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
JUMBO SYMBOL	WINX10
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$200	TWO HUND

$500	FIV HUND
$1,000	ONE THOU
$2,500	25 HUND
$250,000	250 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100, $200 or $500.

H. High-Tier Prize- A prize of $1,000, $2,500 or $250,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1257), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 1257-0000001-001.

K. Pack - A pack of "MEGA JUMBO BUCKS III" Instant Game tickets contains 050 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MEGA JUMBO BUCKS III" Instant Game No. 1257 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "MEGA JUMBO BUCKS III" Instant Game is determined once the latex on the ticket is scratched off to expose 54 (fifty-four) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any SERIAL NUMBER play symbol, the player wins PRIZE shown for that number. If a player reveals a "JUMBO" play symbol, the player wins 10 TIMES the PRIZE shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 54 (fifty-four) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 54 (fifty-four) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 54 (fifty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 54 (fifty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. How-

ever, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "JUMBO" (win x 10) play symbol will only appear on intended winning tickets and only as dictated by the prize structure.

C. No more than four (4) matching non-winning prize symbols will appear on a ticket.

D. No duplicate SERIAL NUMBERS play symbols on a ticket.

E. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 10 and $10).

H. The instant win top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "MEGA JUMBO BUCKS III" Instant Game prize of $10.00, $20.00, $50.00, $100, $200, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a $50.00, $100, $200 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MEGA JUMBO BUCKS III" Instant Game prize of $1,000, $2,500 or $250,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MEGA JUMBO BUCKS III" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. The MEGA JUMBO BUCKS III Instant Game will have four (4) Second-Chance Drawings for prizes.

1. Non-winning MEGA JUMBO BUCKS III scratch-off tickets may be entered into one of the drawings. A valid Game entry shall consist of exactly two (2) non-winning Texas Lottery $10 MEGA JUMBO BUCKS III scratch-off tickets mailed in an envelope with proper postage affixed and bear a Texas postmark. Entries with less than two (2) or more than two (2) non-winning Texas Lottery $10 MEGA JUMBO BUCKS III scratch-off tickets, winning Texas Lottery $10 MEGA JUMBO BUCKS III scratch-off tickets or tickets other than the Texas Lottery $10 MEGA JUMBO BUCKS III scratch-off tickets will be disqualified. Entries showing evidence of alteration to the claimant name or address fields will be disqualified.

2. Only one winner per household per drawing.

3. A player must be 18 years of age or older to enter the second-chance drawings.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "MEGA JUMBO BUCKS III" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "MEGA JUMBO BUCKS III" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial

bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 12,000,000 tickets in the Instant Game No. 1257. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1257 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$10	1,680,000	7.14
$20	1,440,000	8.33
$50	240,000	50.00
$100	132,500	90.57
$200	25,000	480.00
$500	6,500	1,846.15
$1,000	600	20,000.00
$2,500	200	60,000.00
$250,000	12	1,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.40. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1257 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1257, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200904908
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: October 28, 2009

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Instant Game Number 1258 "Bonus Cashword"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1258 is "BONUS CASHWORD". The play style is "crossword".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1258 shall be $3.00 per ticket.

1.2 Definitions in Instant Game No. 1258.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. One of the symbols which appears under the Latex Overprint on the front of

the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z and blackened square.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1258 - 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	
Z	
■	

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $3.00, $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $100 or $500.

H. High-Tier Prize - A prize of $5,000 or $35,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1258), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1258-0000001-001.

K. Pack - A pack of "BONUS CASHWORD" Instant Game tickets contain 125 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of ticket 001 and the back of ticket 125. Configuration B will show the back of ticket 001 and the front of ticket 125.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BONUS CASHWORD" Instant Game No. 1258 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BONUS CASHWORD" Instant Game is determined once the latex on the ticket is scratched off to expose 141 (one hundred forty-one) possible play symbols. The player must scratch the YOUR LETTERS and BONUS play areas. The player must use YOUR LETTERS and the BONUS LETTERS to form words in the BONUS CASHWORD puzzle and the player wins the amount shown in the PRIZE LEGEND. There will be only one prize per ticket. Letters combined to form a complete "word" must be revealed in an unbroken horizontal (left to right) sequence or vertical (top to bottom) sequence of letters within the BONUS CASHWORD puzzle. Only letters within the BONUS CASHWORD puzzle grid that are matched with the YOUR LETTERS and BONUS LETTERS can be used to form a complete "word". In the BONUS CASHWORD puzzle, every lettered square within an unbroken horizontal or vertical sequence must be matched with the YOUR LETTERS or BONUS LETTERS to be considered a complete "word". Words within words are not eligible for a prize. For example, all the YOUR LETTERS play symbols "S, T, O, N, E" must be revealed for this to count as one complete "word". TON, ONE or any other portion of the sequence of STONE would not count as a complete "word". A complete "word" must contain at least three letters. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. One hundred forty-one (141) possible Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have 141 (one hundred forty-one) possible Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 141 (one hundred forty-one) possible Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 141 (one hundred forty-one) possible Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion. 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. Each grid will contain exactly the same amount of letters.

C. Each grid will contain exactly the same number of words.

D. No duplicate words on a ticket.

E. All words used will be from the TEXAS APPROVED WORD LIST CASHWORD/CROSSWORD v.1.0.

F. All words will contain a minimum of 3 letters.

G. All words will contain a maximum of 9 letters.

H. The CALLER AREA is defined as the combined YOUR LETTERS and BONUS area.

I. No duplicate play symbols in the CALLER AREA.

J. There will be a minimum of 3 vowels (A, E, I, O and U) in the CALLER AREA.

K. A minimum of 15 play symbols in the CALLER AREA will match at least one letter in the crossword grid.

L. At least one play symbol in the BONUS area will match to at least one letter in the crossword grid.

M. The presence or absence of any letter or combination of letters in the CALLER AREA will not be indicative of a winning or non-winning ticket.

N. No consonant play symbol will appear more than 9 times in the crossword grid and no vowel will appear more than 14 times in the crossword grid.

O. Words from the TEXAS REJECTED WORD LIST v.2.0 will not appear horizontally in the YOUR LETTERS area.

P. On winning tickets, at least 1 play symbol in the BONUS area will match at least one letter in a completed word.

Q. On non-winning tickets, each crossword grid will have at least 2 completed words.

R. Each non-winning ticket will have at least 5 near wins (word with all but one letter matched).

2.3 Procedure for Claiming Prizes.

A. To claim a "BONUS CASHWORD" Instant Game prize of $3.00, $5.00, $10.00, $20.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "BONUS CASHWORD" Instant Game prize of $5,000 or $35,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BONUS CASHWORD" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "BONUS CASHWORD" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "BONUS CASHWORD" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefore. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 30,000,000 tickets in the Instant Game No. 1258. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1258 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$3	3,360,000	8.93
$5	4,320,000	6.94
$10	600,000	50.00
$20	360,000	83.33
$100	61,500	487.80
$500	12,500	2,400.00
$5,000	75	400,000.00
$35,000	50	600,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.44. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1258 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1258, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200904909
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: October 28, 2009

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Panhandle Regional Planning Commission

Legal Notice

Panhandle Regional Planning Commission (PRPC) has issued two Requests for Information as specified below. Training and items to be purchased will be funded with American Recovery and Reinvestment Act (ARRA) Child Care Quality Improvement grants.

Child Care Provider Trainer List. PRPC seeks to develop a list of pre-qualified trainers who may be engaged to provide training in the Texas Panhandle for child care provider staff in various child care-related topics. Topics may include but are not limited to child development, health and safety, detection/prevention of child abuse, classroom management, and providing care for children with physical or mental disabilities.

Child Care Quality Improvement Vendor List. PRPC seeks to develop a list of pre-qualified vendors from which may be purchased items of furniture, equipment and developmentally appropriate learning materials to be used by local child care providers. The purpose of this solicitation is to compile information from vendors about their related offerings, associated services, including item costs, shipping and handling fees, assembly fees, discounts, warranties, return policies, inside delivery fees, and availability of pre-loaded purchase cards.

PRPC makes no guarantees of purchases from the Trainer and Vendor lists.

Interested trainers and vendors may obtain a copy of the applicable solicitation by contacting Pam Zenick, at (806) 372-3381/(800) 477-4562 or pzenick@theprpc.org. The solicitations may also be picked up at PRPC's offices located at 415 West Eighth in Amarillo, Texas. The required information should be submitted to PRPC no later than November 16, 2009.

TRD-200904883
Pam Zenick
Workforce Development Planning, Information and Evaluation Manager
Panhandle Regional Planning Commission
Filed: October 28, 2009

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Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on October 20, 2009, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable for an Amendment to a State-Issued Certificate of Franchise Authority: Add City of Bruceville-Eddy, Texas, Project Number 37583 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include the city limits of Bruceville-Eddy, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All inquiries should reference Project Number 37583.

TRD-200904827
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 22, 2009

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Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on October 21, 2009, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Cable One, Inc. for an Amendment to a State-Issued Certificate of Franchise Authority: Remove City of McLean, Texas; Project Number 37588 before the Public Utility Commission of Texas.

The requested amendment is to remove the city limits of McLean, Texas from the service area footprint.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All inquiries should reference Project Number 37588.

TRD-200904828
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 22, 2009

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Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on October 23, 2009, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Comcast of Houston, LLC for an Amendment to a State-Issued Certificate of Franchise Authority; to add Missouri City, Texas, Project Number 37590 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include the city limits of Missouri City, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at (800)735-2989. All inquiries should reference Project Number 37590.

TRD-200904894
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 28, 2009

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Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on October 23, 2009, to amend a certificate of convenience and necessity for a proposed transmission line in Roberts County, Texas.

Docket Style and Number: Application of Southwestern Public Service Company to Amend a Certificate of Convenience and Necessity for a Proposed 115-kV Transmission Line within Roberts County, Docket Number 37523.

The Application: The application of Southwestern Public Service Company (SPS) is for the proposed project designated as the Canadian River Municipal Water Authority or the CRMWA #23 Transmission Line Project. CRMWA plans to install (15) 750 horsepower high capacity water wells in the newly developed Roberts County Water Field. The proposed 115-kV line from the existing Adobe Creek Substation to proposed CRMWA #23 Substation is needed to provide new transmission service to the CRMWA. The miles of right-of-way for this project will be approximately 12 miles (preferred route). The estimated date to energize facilities is one month following construction.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is December 7, 2009. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 37523.

TRD-200904893
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 28, 2009

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Notice of Commission Staff Petition for Determination of Financial Commitment for the Panhandle A and Panhandle B Competitive Renewable Energy Zones

Notice is given to the public of a petition filed with the Public Utility Commission of Texas (commission) on October 16, 2009, for the determination of financial commitment for the Panhandle A and Panhandle B competitive renewable energy zones (CREZs).

Docket Style and Number: Commission Staff's Petition for Determination of Financial Commitment for the Panhandle A and Panhandle B Competitive Renewable Energy Zones, Docket Number 37567.

The Application: The commission staff filed this petition to initiate a proceeding for the commission to determine whether sufficient financial commitment by renewable generators exists to grant certificates of convenience and necessity for transmission facilities for the Panhandle A and Panhandle B CREZs. This proceeding was initiated in response to the commission order issued on October 15, 2009, in Project Number 34577, *Proceeding to Establish Policy Relating to Excess Development in Competitive Renewable Energy Zones,* adopting amendments to P.U.C. Substantive Rule §25.174.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas no later than November 9, 2009, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) at (800) 735-2989. All correspondence should refer to Docket Number 37567.

TRD-200904834
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 23, 2009

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Notice of a Petition for Declaratory Order

Notice is given to the public of a petition for declaratory order with the Public Utility Commission of Texas (commission) on October 20, 2009.

Docket Style and Number: Petition of Texas-New Mexico Power Company for a Declaratory Order Regarding Refund to Correct Billing for Retail Delivery Service to City of Fort Stockton and Competitive Retailers Serving City of Fort Stockton; Docket Number 37585.

The Application: Texas-New Mexico Power Company (TNMP) has determined that errors in its billing information resulted in over-billing and under-billing for various street lighting services provided by TNMP to the City of Fort Stockton (the City). These billings occurred both prior to and since restructuring of the Texas electric market. TNMP reported that on October 16, 2009, TNMP and the City agreed upon a final resolution in the amount of $654,207.60 in Transmission/Distribution (TDU) charges to be refunded to the City for the pre-deregulation billing errors that occurred while TNMP was providing service directly to the City as an integrated utility. TNMP also sought and obtained consent from the three applicable REPs for direct refund of post-deregulation TDU charges, subject only to acknowledgements and releases in favor of those REPs from the City relating to such overbilled TDU charge amounts. However, on October 19, 2009, the City rejected its agreement with TNMP. TNMP asserts that the City is seeking for TNMP to also refund the energy and other non-TDU charges that were assessed directly by the REPs to the City during the post-restructuring period.

TNMP seeks a declaratory order (1) declaring that TNMP is not required to refund to the City any additional energy or other non-TDU charges that were assessed directly against the City by the REPs, and (2) determining any dispute regarding the amount to be refunded.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing-and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All correspondence should refer to Docket Number 37585.

TRD-200904892
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 28, 2009

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Notice of Workshop - Change in Start Time

The staff of the Public Utility Commission of Texas (commission) will hold a workshop to discuss issues related to the Commission's present protections for disconnections and issues raised in previous proceedings related to disconnections, on Friday, November 20, 2009, at 1:30 p.m., instead of 9:30 a.m., in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 36131, *Rulemaking Relating to Disconnection of Electric Service and Deferred Payment Plans* has been established for this proceeding.

Questions concerning the workshop or this notice should be referred to Christine Wright, Competitive Markets Division, (512) 936-7376. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200904813
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 22, 2009

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Public Notice of Workshop

The staff of the Public Utility Commission of Texas (commission) will hold a workshop to discuss issues related to the present rules and market processes related to meter tampering and diversion, on Friday, November 6, 2009, at 9:30 a.m., in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 37291, *Rulemaking Relating to Meter Tampering* has been established for this proceeding.

Five days prior to the workshop the commission shall make available in Central Records under Project Number 37291, an agenda for the format of the workshop.

Questions concerning the workshop or this notice should be referred to Christine Wright, Competitive Markets Division, (512) 936-7376. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200904814
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 22, 2009

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Public Notice of Workshop on the Rulemaking for Utility Infrastructure Storm Hardening

The staff of the Public Utility Commission of Texas (Commission) will hold a workshop regarding the Rulemaking for Utility Infrastructure and Storm Hardening on Thursday, November 12, 2009, at 9:00 a.m. in the Commissioner's Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 37475, *Rulemaking for Utility Infrastructure and Storm Hardening*, has been established for this proceeding. Please refer to the draft strawman, currently filed under Project Number 37475. The Commission requests interested persons file written comments on this strawman rule.

Five days prior to the workshop the Commission shall make available in Central Records under Project Number 37475 an agenda for the format of the workshop.

Questions concerning the workshop or this notice should be referred to Regina Chapline, Infrastructure Policy Analyst, Infrastructure and Reliability Division at (512) 936-7392, or regina.chapline@puc.state.tx.us. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200904891
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 28, 2009

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Railroad Commission of Texas

Request for Comments on Surface Mining and Reclamation Division Forms

The Railroad Commission of Texas requests comments on proposed Surface Mining and Reclamation Division forms, SMRD-3U, SMRD-5U, SMRD-38U, and SMRD-39U, as part of proposed repeals, new rules, and amendments in 16 TAC Chapter 11 (relating to Surface Mining and Reclamation Division), published in this issue of the *Texas Register*. The rulemaking proposal, pursuant to House Bill 3837, 80th Legislature (2007), implements the Commission's expanded statutory authority to regulate uranium exploration. The Commission is requesting comments on the proposed rulemaking, as well as the proposed forms.

SMRD-3U, Application to Conduct Uranium Exploration Activities by Drilling

RAILROAD COMMISSION OF TEXAS
SURFACE MINING AND RECLAMATION DIVISION

1701 N. CONGRESS | CAPITOL STATION - P.O. BOX 12967 | AUSTIN, TEXAS 78711-2967

APPLICATION TO CONDUCT URANIUM EXPLORATION ACTIVITIES BY DRILLING

All items applicable to the type of application must be addressed. File in triplicate with the Director of the Surface Mining and Reclamation Division along with the appropriate application fees. (Refer to 16 TEXAS ADMINISTRATIVE CODE §§11.132, 11.133, and 11.134 for more information concerning this form.)

Application Type: ☐ New Permit ☐ Renewal ☐ Revision

Application Fees: [Refer to 16 TEXAS ADMINISTRATIVE CODE §11.136]: New/renewal: $1.50 per acre plus $50 for each exploration borehole drilled during 12-month permit term; Revision: $1.50 per additional acre.

I. Applicant Name: _____

Physical Address: _____
(Street or P.O. Box)

Mailing Address: _____
(Street or P.O. Box)

_____
(City) (State) (Zip Code) (Telephone)

II. Name of Applicant's On-site Representative: _____

Address: _____
(Street or P.O. Box)

_____
(City) (State) (Zip Code) (Telephone)

III. Required Information For New and Renewal Applications (Responses may be provided as referenced attachments to this form.)

A. A description of the geographic location, including the acreage of the proposed area of exploration. The name of the county(s) in which exploration activities are to be conducted must also be provided.

B. A U.S. Geological Survey topographic map(s) (scale 1:24,000) in paper and digital format on which is shown the following: (1) proposed exploration area boundary with acreage stated to nearest acre; (2) land tracts within the permit area; (3) identification of those land tracts for which right-of-entry has been obtained to conduct exploration activities; and (4) the location of private and public water wells, including those identified by the Texas Water Development Board, interior to and within 1,000 feet of the proposed permit boundary.

C. Provide the name, address and telephone number for the following:

(1) each groundwater conservation district encompassing the area in which the exploration activities will occur;

(2) the mayor and health authority of each municipality within 10 miles in all directions of the boundary of the area in which the exploration activities will occur;

(3) the county judge and health authority of each county in which the exploration activities will occur;

(4) each member of the Texas Legislature who represents the area in which the exploration activities will occur;

(5) each landowner of record of the surface within the proposed exploration permit area, indexed to land tracts shown on the map provided in III.B. above; and

(6) each owner of record of the mineral estate for which right of entry has been obtained to conduct exploration activities, indexed to land tracts shown on the map provided in III.B. above.

D. Provide the following information:

(1) a description of the geology and hydrogeology for the proposed permit area, including cross-sections and maps;

(2) a description of the exploration drilling method, including the depth of subsurface penetration and the estimated size of the surface disturbance;

(3) an estimate of the number of exploration boreholes to be drilled during the permit term and the physical method for marking each borehole location for inspection;

(4) a description of the proposed plugging and well construction methods. (Note: These methods must conform to the requirements in 16 TEXAS ADMINISTRATIVE CODE §11.138.)

(5) an explanation of the proposed methods for disposing of cuttings produced by the drilling activity and protecting mud pits from rainfall runoff; and

(6) a description of the proposed procedures for leveling any disturbance caused by the drilling activities. (Note: These procedures must conform to the requirements in 16 TEXAS ADMINISTRATIVE CODE §11.138.)

IV. Revision Applications (Refer to 16 TEXAS ADMINISTRATIVE CODE §11.133)

Provide a detailed description of the changes proposed to the exploration activities. Changes may include a revised operation plan or reclamation plan, or revised administrative information.

CERTIFICATION

I, (name) _____, (title) _____ state that I have knowledge of the facts set forth in this Application to Conduct Uranium Exploration Activities by Drilling and that same are true and correct to the best of my knowledge and belief. I further state that, to the best of my knowledge and belief, the project for which application is made will not in any way violate any law, rule, ordinance, or decree of any duly authorized governmental entity having jurisdiction.

Signature: _____

Title: _____

Date: _____

SMRD-5U, Application to Transfer a Uranium Exploration Permit

RAILROAD COMMISSION OF TEXAS
SURFACE MINING AND RECLAMATION DIVISION

1701 N. CONGRESS | CAPITOL STATION - P.O. BOX 12967 | AUSTIN, TEXAS 78711-2967

APPLICATION TO TRANSFER A URANIUM EXPLORATION PERMIT

All items must be addressed by permittee. File in triplicate with the Director of the Surface Mining and Reclamation Division. (Refer to 16 TEXAS ADMINISTRATIVE CODE §11.135.)

Permit No.: _____ Permittee: _____

I. Name of Transferee: _____

Transferee Physical Address: _____
(Street or P.O. Box)

Transferee Mailing Address: _____
(Street or P.O. Box)

_____
(City) (State) (Zip Code) (Telephone)

II. Name of Transferee's On-site Representative: _____

Representative's Address: _____
(Street or P.O. Box)

_____
(City) (State) (Zip Code) (Telephone)

III. Required Information

a. A U.S. Geological Survey topographic map(s) (scale 1:24,000) provided in paper and digital format on which are identified the permit area proposed for transfer, including all tracts to be transferred for which the permittee has obtained right-of-entry for exploration activities. (Refer to 16 TEXAS ADMINISTRATIVE CODE §11.132(6)).

b. A cased borehole report (Form SMRD-38U) or plugging report (Form SMRD-39U) from the permittee for each borehole drilled by the permittee that has not already been submitted, by which the permittee attests that all plugging and reclamation requirements have been met prior to application. (Refer to 16 TEXAS ADMINISTRATIVE CODE §11.139.)

CERTIFICATIONS

I, (name) _____, (title) _____, for the permittee, state that I have knowledge of the facts set forth herein and that same are true and correct to the best of my knowledge and belief.

Date: _____ Signature: _____

I, (name) _____, (title) _____, for the transferee, state that I have knowledge of the requirements of the permit for which application is made. I further state that, to the best of my knowledge and belief, this permit, upon transfer, will not in any way violate any law, rule, ordinance, or decree of any duly authorized governmental entity having jurisdiction.

Date: _____ Signature: _____

RAILROAD COMMISSION OF TEXAS
SURFACE MINING AND RECLAMATION DIVISION

1701 N. CONGRESS | CAPITOL STATION - P.O. BOX 12967 | AUSTIN, TEXAS 78711-2967

Cased Exploration Well Completion Report

(Refer to 16 TEXAS ADMINISTRATIVE CODE §11.139)

Uranium Exploration Permit No. _____

Permittee: _____ Well name: _____

Person performing completion of well, if different from Permittee: _____

Drilling date: Start: _____ End: _____ Completion date: Start: End:

Logging date: Start: _____ End: _____ TCEQ Registration/Permit No.: _____

Well Completion Information:

Location (State Plane coordinates) ☐ NAD27 or ☐ NAD83: N _____ E _____

Drilling depth: _____ ft Casing material/diameter: _____

Completion depth: _____ ft Screen type: _____

Borehole diameter: _____ in. Screened interval: _____ to _____ ft

Seal Information:

Zone	Cement (sacks)	Water (bbl)	Bentonite† (lb)	Additives† (lb)	Slurry Volume (bbl)	Slurry Density (lb/gal)
Annular seal*						
Surface seal						
Topping of hole						

* if more than three downhole annular seal zones are installed, attach additional page with relevant information
† if bentonite or other additives are approved, indicate amounts used

Surface Completion Information:

Ground elevation: _____ ft amsl Top-of-casing elevation: _____ ft amsl

Static water level: _____ ft (depth from top-of-casing) Date: _____

Well marking and protection measures: _____

_____

CERTIFICATION

I, (name) _____, (title) _____, state that I have actual, personal knowledge of the facts set forth in this cased borehole completion report, and that same are true and correct to the best of my knowledge and belief. I further state that, to the best of my knowledge and belief, the reclamation, casing, and completion requirements as set forth in the Act, the rules, and in the provisions of the approved permit for this borehole have been satisfied.

I further certify that this borehole has been ☐ registered as Well No. _____ under the regulatory responsibility of the Texas Commission on Environmental Quality in Austin, Texas, or ☐ transferred to Permit No. _____, issued by and held under the regulatory responsibility of the Texas Commission on Environmental Quality in Austin, Texas, for use pursuant to that permit. The location of this cased exploration well is accurately reported in this document.

Signature: _____

Title: _____

Date: _____

SMRD-39U, Borehole Plugging Report

RAILROAD COMMISSION OF TEXAS
SURFACE MINING AND RECLAMATION DIVISION

1701 N. CONGRESS | CAPITOL STATION - P.O. BOX 12967 | AUSTIN, TEXAS 78711-2967

Borehole Plugging Report

(Refer to 16 TEXAS ADMINISTRATIVE CODE §11.139)

Uranium Exploration Permit No. _____

Permittee: _____ Hole identifier: _____

Person performing plugging of borehole, if different from Permittee: _____

Drilling date: Start: _____ End*: _____ Plugging date: Start: _____ End: _____
*End date is date that drill reaches total depth.
Logging date: Start: _____ End: _____

Plugging and Abandonment Information:

Location (State Plane coordinates) ☐ NAD27 or ☐ NAD83: N _____ E _____

Borehole total depth: _____ ft Borehole diameter: _____ in.

Cement Type: _____ Emplacement Method: _____

Additional information*: _____

*pertinent descriptive information: e.g., downhole manufactured plugs used; special conditions encountered, etc.

Seal Information:

Zone	Cement (sacks)	Water (bbl)	Bentonite† (lb)	Additives† (lb)	Slurry Volume (bbl)	Slurry Density (lb/gal)
Water-zone seal#						
Downhole seal*						
Surface seal						
Topping of hole						

if a single downhole seal is used, seal information may be included here and no additional information needed for downhole seal.
* if more than three downhole seals are installed, attach additional page with relevant information
† if bentonite or other additives are approved, indicate amounts used

Surface Reclamation:

Ground leveled: ____ Date Seeded: ____ Date Depth from surface to top of seal: ____ ft

Plugged-hole marking method used: _____

CERTIFICATION

I, (name) _____, (title) _____, state that I have actual, personal knowledge of the facts set forth in this borehole plugging report, and that same are true and correct to the best of my knowledge and belief. I further state that, to the best of my knowledge and belief, the plugging and reclamation requirements as set forth in the Act, the rules, and in the provisions of the approved permit for this borehole have been satisfied.

Signature: _____

Title: _____

Date: _____

Comments on the proposed rulemaking or on the proposed forms included in this notice may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.php; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments until 5:00 p.m., Monday, December 7, 2009, and encourages all interested persons to submit comments no later than this deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call John Caudle at (512) 463-6901. The status of all Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.php.

TRD-200904862
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Filed: October 27, 2009

♦ ♦ ♦

Supreme Court of Texas

Approval of Proposed Amendments to the Texas Disciplinary Rules of Professional Conduct

Misc. Docket No. 09-9175

WHEREAS:

1. The Texas Disciplinary Rules of Professional Conduct "define proper conduct for purposes of professional discipline" of lawyers in Texas.[1] These Rules, coupled with their interpretive comments, also "constitute a body of principles" to guide lawyers who are attempting to resolve issues of professional discretion through the exercise of moral and professional judgment.[2]

2. The Court adopted the current Texas Disciplinary Rules of Professional Conduct in 1990. Since then, many changes have occurred in the ethical and legal landscape that governs the conduct of lawyers in Texas. In addition, in response to recommendations from the Ethics 2000 Commission, the American Bar Association (ABA) significantly revised the Model Rules of Professional Conduct. Because of the extent to which the body of principles that governs lawyers' conduct has evolved, the Court decided that a comprehensive review of the Texas Disciplinary Rules of Professional Conduct was in order.

3. In Misc. Docket No. 03-9147, the Court appointed the Task Force on the Texas Disciplinary Rules of Professional Conduct. The Task Force included a public member and members intended to represent the interests of federal prosecutors, corporate practitioners, civil trial practitioners, criminal trial practitioners, the State Bar of Texas Chief Disciplinary Counsel, Texas Commission on Lawyer Discipline, Board of Disciplinary Appeals, Grievance Oversight Committee, Texas Center for Legal Ethics and Professionalism, and State Bar of Texas Committee on Texas Disciplinary Rules of Professional Conduct.[3] The Court asked the Task Force to study the amended ABA Model Rules of Professional Conduct and compare them with the current Texas Disciplinary Rules of Professional Conduct and other states' rules governing lawyers' conduct. The Court also asked the Task Force to advise the Court of any changes the Task Force deemed appropriate to improve the Texas Disciplinary Rules of Professional Conduct. The Task Force completed these tasks and submitted a report to the Court.

4. The State Bar of Texas Committee on the Texas Disciplinary Rules of Professional Conduct analyzed the Task Force's recommendations in conjunction with the current Texas Disciplinary Rules of Professional Conduct, amended ABA Model Rules of Professional Conduct, and other states' rules governing lawyers' conduct. The State Bar Committee submitted analyses and recommendations to the Court, State Bar of Texas President, and Task Force in a series of written reports.[4]

5. The Court asked the Task Force and State Bar Committee to examine and comment on each other's recommendations. Due to the extent of differences between their recommendations, the Court also requested the formation of a Conference Committee, consisting of Task Force and State Bar Committee members designated by their respective Chairs. The Conference Committee identified all Texas Disciplinary Rules of

Professional Conduct for which the Court Task Force and State Bar Committee made substantially similar recommendations, attempted to resolve divergent recommendations, and submitted final recommendations to the Court.

6. The Court analyzed the recommendations of the Task Force, State Bar Committee, and Conference Committee, in conjunction with the current Texas Disciplinary Rules of Professional Conduct and amended ABA Model Rules of Professional Conduct, and made the changes reflected in this Order. Rules that are new or that have been renumbered are so noted by bracketed statements following the title of the Rules. All of the changes in this Order will be redlined against the current Texas Disciplinary Rules of Professional Conduct and posted on the websites of the Court (at http://www.supreme.courts.state.tx.us) and the State Bar of Texas (at http://www.texasbar.com/).

7. The State Bar Committee is drafting interpretive comments to reflect the amendments to the Texas Disciplinary Rules of Professional Conduct. The Committee is scheduled to complete its draft of the interpretive comments by the end of 2009.

IT IS THEREFORE ORDERED that:

1. The attached amendments to the Texas Disciplinary Rules of Professional Conduct, along with modifications made after public comments are received, will be submitted to the State Bar of Texas Board of Directors for approval and consideration for a referendum to the membership of the State Bar. Public comments should be sent on or before December 31, 2009 to Kennon L. Peterson, Rules Attorney, at P.O. Box 12248, Austin, Texas 78711, or kennon.peterson@courts.state.tx.us.

2. After this Court receives and finalizes all of the interpretive comments for the amended Texas Disciplinary Rules of Professional Conduct, the interpretive comments will be posted on the website of the Supreme Court of Texas at http://www.supreme.courts.state.tx.us. The interpretive comments will also be sent to the State Bar of Texas Board of Directors for approval and consideration for a referendum to the membership of the State Bar.

3. The Clerk is directed to:

a. submit a copy of the Order for publication in the *Texas Register;*

b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal;*

c. cause a copy of this Order to be posted on the website of the Supreme Court of Texas at http://www.supreme.courts.state.tx.us; and

d. cause a redlined document comparing the current and amended Texas Disciplinary Rules of Professional Conduct to be posted on the website of the Supreme Court of Texas at http://www.supreme.courts.state.tx.us.

SIGNED AND ENTERED this 20th day of October, 2009.

_____

Wallace B. Jefferson, Chief Justice

_____

Nathan L. Hecht, Justice

_____

Harriet O'Neill, Justice

_____

Dale Wainwright, Justice

_____

David M. Medina, Justice

_____

Paul W. Green, Justice

_____

Phil Johnson, Justice

_____

Don R. Willett, Justice

_____

Eva M. Guzman, Justice

Section 9 of State Bar Rules:

Texas Disciplinary Rules of Professional Conduct

Preamble: A Lawyer's Responsibilities

1. A lawyer is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice. Lawyers, as guardians of the law, play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship with and function in our legal system. A consequent obligation of lawyers is to maintain the highest standards of ethical conduct.

2. As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the clients position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others. As intermediary between clients, a lawyer seeks to reconcile their divergent interests as an advisor and, to a limited extent, as a spokesperson for each client. A lawyer acts as evaluator by examining a client's affairs and reporting about them to the client or to others.

3. In all professional functions, a lawyer should zealously pursue a client's interests within the bounds of the law. In doing so, a lawyer should be competent, prompt, and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except to the extent that use or disclosure is required or permitted by law or the Texas Disciplinary Rules of Professional Conduct.

4. A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers, and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

5. As a public citizen, a lawyer should seek improvement of the law, the administration of justice, and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law, and work to strengthen legal education. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance, and should therefore devote professional time and civic influence on their behalf. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

6. A lawyer should render public interest legal service. The basic responsibility for providing legal services for those unable to pay ultimately rests on the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in or otherwise support the provision of legal services to the disadvantaged. The provision of free legal services to those unable to pay reasonable fees is a moral obligation of each lawyer, as well as the profession generally. A lawyer may discharge this basic responsibility by providing public interest legal services without a fee, or at a substantially reduced fee, in one or more of the following areas: poverty law, civil rights law, public rights law, charitable organization representation, the administration of justice, and by financial support for organizations that provide legal services to persons of limited means.

7. In the law practice, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from apparent conflict between a lawyer's responsibilities to clients, to the legal system, and to the lawyer's own interests. The Texas Disciplinary Rules of Professional Conduct prescribe terms for resolving such tensions. They do so by stating minimum standards of conduct below which no lawyer can fall without being subject to disciplinary action. Within the framework of these Rules many difficult issues of professional discretion can arise. The Rules and their Comments constitute a body of principles upon which the lawyer can rely for guidance in resolving such issues through the exercise of sensitive professional and moral judgment. In applying these Rules, lawyers may find interpretive guidance in the Comments.

8. The legal profession has a responsibility to assure that its regulation is undertaken in the public interest rather than in furtherance of parochial or self-interested concerns of the bar, and to insist that every lawyer both comply with its minimum disciplinary standards and aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

9. Each lawyer's own conscience is the touchstone against which to test the extent to which the lawyer's actions may rise above the disciplinary standards prescribed by these rules. The desire for the respect and confidence of the members of the profession and of the society which it serves provides the lawyer the incentive to attain the highest possible degree of ethical conduct. The possible loss of that respect and confidence is the ultimate sanction. So long as its practitioners are guided by these principles, the law will continue to be a noble profession. This is its greatness and its strength, which permit no compromise.

Preamble: Scope

10. The Texas Disciplinary Rules of Professional Conduct are rules of reason that define proper conduct for purposes of professional discipline. They are imperatives, cast in the terms "shall" or "shall not." The Comments are cast in the terms "may" or "should" and are permissive, defining areas in which the lawyer has professional discretion. When a lawyer exercises such discretion, whether by acting or not acting, no disciplinary action may be taken. The Comments also frequently illustrate or explain applications of the Rules, in order to provide guidance for interpreting the Rules and practicing in compliance with the spirit of the Rules. The Comments do not, however, add obligations to the Rules. No disciplinary action may be taken for failure to conform to the Comments.

11. The Rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers, and substantive and procedural law in general. Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion, and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules and Comments do not, however, exhaust the moral and ethical considerations that should guide a lawyer, for no worthwhile human activity can be completely defined by legal rules.

12. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. For purposes of determining the lawyer's authority and responsibility, individual circumstances and principles of substantive law external to these Rules determine whether a client-lawyer relationship may be found to exist. But there are some duties, such as of that of confidentiality, that may attach before a client-lawyer relationship has been established.

13. The responsibilities of government lawyers, under various legal provisions, including constitutional, statutory, and common law, may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances in which a private lawyer could not represent multiple private clients. They also may have authority to represent the public interest in circumstances in which a private lawyer would not be authorized to do so. These Rules do not abrogate any such authority.

14. These Rules make no attempt to prescribe either disciplinary procedures or penalties for violation of a Rule.

15. These Rules do not undertake to define standards of civil liability of lawyers for professional conduct. Violation of a Rule does not give rise to a private cause of action nor does it create any presumption that a legal duty to a client has been breached. Likewise, these Rules are not designed to be standards for procedural decisions. Furthermore, the purpose of these Rules can be abused when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Accordingly, nothing in the Rules should be deemed to augment any substantive legal duty of lawyers or the extradisciplinary consequences of violating such a duty.

16. Moreover, these Rules are not intended to govern or affect judicial application of either the attorney-client or work-product privilege. The fact that in exceptional situations the lawyer under the Rules has a limited discretion to disclose a client confidence does not vitiate the proposition that, as a general matter, the client has a reasonable expectation that information relating to the client will not be voluntarily disclosed and that disclosure of such information may be judicially compelled only in accordance with recognized exceptions to the attorney-client and work-product privileges.

Terminology

Rule 1.00. Terminology

The following definitions apply to all Texas Disciplinary Rules of Professional Conduct unless the context in which the word or phrase is used requires a different definition.

(a) "Adjudicatory official" denotes a person who serves on a Tribunal.

(b) "Adjudicatory proceeding" denotes the consideration of a matter by a Tribunal.

(c) "Affiliated":

(1) A lawyer is "affiliated" with a firm if either the lawyer or the lawyer's professional entity:

(i) is a shareholder, partner, member, associate, or employee of that firm;

(ii) has any other relationship with that firm, regardless of the title given to it, that provides the lawyer with access to the confidences of the firm's clients that is comparable to that typically afforded to lawyers in category (i); or

(iii) is held out as being in category (i) or (ii).

(2) A lawyer is "affiliated" with another lawyer if either the lawyers or their professional entities have any of the relationships described in categories (i) - (iii) above.

(d) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

(e) "Consult" or "consultation" denotes communication of information and advice reasonably sufficient to permit the client to appreciate the significance of the matter in question.

(f) "Competent" or "competence" denotes possession of or the ability to timely acquire the legal knowledge, skill, and training reasonably necessary for the representation of the client.

(g) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is provided in writing by the person, or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. If it is not feasible for the lawyer to obtain or transmit the writing at the time the person provides informed consent, then the lawyer must obtain or transmit it within a reasonable time after the person provides informed consent.

(h) "Firm" or "law firm" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship, or other association authorized to practice law; or a lawyer or lawyers employed in the legal department of a corporation, legal services organization, or other organization, or in a unit of government.

(i) "Fitness" denotes those qualities of physical and mental health that enable a lawyer to discharge the lawyer's responsibilities to a client in conformity with the Texas Disciplinary Rules of Professional Conduct. Normally a lack of fitness is indicated most clearly by a persistent inability to discharge, or an unreliability in carrying out, significant obligations.

(j) "Fraud" or "fraudulent," when used in relation to conduct by a lawyer, denotes an intent to deceive and either:

(1) a knowing misrepresentation of a material fact; or

(2) a knowing concealment of a material fact if there is a duty to disclose the material fact.

(k) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has adequately explained the material risks of and reasonably available alternatives to the proposed course of conduct.

(l) "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(m) "Partner" denotes a member of a partnership, shareholder in a law firm organized as a professional corporation, or member of an association authorized to practice law.

(n) "Person" includes a legal entity, as well as an individual.

(o) "Personally represents" and "represents": A lawyer "personally represents" a client in a matter if the lawyer personally exercises legal skill or judgment on behalf of the client in connection with that matter. A lawyer "represents" a client in a matter if the client is personally represented in that matter by that lawyer or by an affiliated lawyer.

(p) "Reasonable" or "reasonably," when used in relation to conduct by a lawyer, denotes the conduct of a reasonably prudent and competent lawyer.

(q) "Reasonable belief" or "reasonably believes," when used in reference to a lawyer, denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(r) "Reasonably should know" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(s) "Substantial" or "substantially," when used in reference to degree or extent, denotes a material matter of clear significance.

(t) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding, or a legislative body, an administrative agency, or another body acting in an adjudicative capacity. A legislative body, an administrative agency, or another body acts in an adjudicative capacity when, after the presentation of evidence or legal argument by a party or parties, one or more neutral officials will render a binding legal judgment directly affecting a party's or parties' interests in a particular matter.

(u) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording, and e-mail. A "signed" writing includes an electronic sound, symbol, or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

Comment: The terms "fraud" and "fraudulent" do not incorporate all of the elements of common law fraud. For example, for purposes of these Rules, it is not necessary that anyone suffer damages or rely on the misrepresentation or failure to inform. Also, the terms do not include negligent misrepresentation or negligent failure to apprise another of relevant information. Under subparagraph (j)(2), the duty to disclose a material fact may arise under Texas law or these Rules.

Section I. Client-Lawyer Relationship

Rule 1.01. Competent and Diligent Representation

(a) A lawyer shall not accept or continue employment in a legal matter that the lawyer knows or reasonably should know is beyond the lawyer's competence, unless:

(1) another lawyer who is competent to handle the matter is, with the prior informed consent of the client, associated in the matter; or

(2) the advice or assistance of the lawyer is reasonably required in an emergency and the lawyer limits the advice and assistance to that reasonably necessary in the circumstances.

(b) In representing a client, a lawyer shall not:

(1) neglect a legal matter entrusted to the lawyer; or

(2) frequently fail to carry out completely the obligations that the lawyer owes to the client.

(c) As used in this Rule, "neglect" signifies inattentiveness involving a conscious disregard for the responsibilities owed to a client or clients.

Terminology: See Rule 1.00 for definitions of "competence," "competent," "informed consent," "knows," "reasonably," "reasonably should know," and "represents."

Rule 1.02. Scope of Representation and Allocation of Authority

(a) Subject to (b) through (f) and Rule 1.14, a lawyer shall abide by a client's decisions:

(1) concerning the objectives and general methods of representation;

(2) whether to accept an offer of settlement of a matter, except as otherwise authorized by law;

(3) in a criminal case, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.

(b) A lawyer may limit the scope, objectives, and general methods of the representation if the client provides informed consent.

(c) A lawyer shall not assist or counsel a client to engage in conduct that the lawyer knows is criminal or fraudulent. A lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel and represent a client in connection with the making of a good faith effort to determine the validity, scope, meaning, or application of the law.

(d) When a lawyer has confidential information clearly establishing that a client is likely to commit a criminal or fraudulent act that is likely to result in substantial injury to the financial interests or property of another, the lawyer shall promptly make reasonable efforts under the circumstances to dissuade the client from committing the crime or fraud.

(e) When a lawyer has confidential information clearly establishing that the lawyer's client has committed a criminal or fraudulent act in the commission of which the lawyer's services have been used, the lawyer shall make reasonable efforts under the circumstances to persuade the client to take corrective action.

(f) When a lawyer knows that a client expects representation not permitted by law or these Rules, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.

Terminology: See Rule 1.00 for definitions of "consult," "consultation," "informed consent," "knows," "reasonable," and "represents."

Rule 1.03. Communication

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter; and

(4) promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Terminology: See Rule 1.00 for definitions of "consult," "informed consent," "reasonably," and "represents."

Rule 1.04. Fees

(a) A lawyer shall not enter into an arrangement for, charge, or collect an illegal or clearly excessive fee. A fee is clearly excessive when, after a review of the facts, a reasonable lawyer would be left with a firm belief or conviction that the fee is in excess of a reasonable fee.

(b) Factors that may be considered in determining the reasonableness of a fee include, but are not limited to, the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

(c) The scope of the representation and the basis or rate of the fee and expenses shall be communicated to the client before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any change in the basis or rate of the fee or expense shall also be communicated to the client.

(d) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by law or (f). A contingent fee agreement shall:

(1) be in writing, and signed by the client;

(2) state the method by which the fee is to be determined, including if there is to be a differentiation in the percentage or percentages that will accrue to the lawyer in the event of settlement, trial, or appeal, and the percentage for each;

(3) state the litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated; and

(4) inform the client of any expenses for which the client will be liable whether or not the client is the prevailing party.

(e) Upon conclusion of a contingent-fee matter, the lawyer shall provide the client with a written statement describing the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(f) A lawyer shall not enter into an arrangement for, charge, or collect a contingent fee for representing a defendant in a criminal case.

(g) A division or arrangement for division of a fee between lawyers who are not in the same firm may be made only if:

(1) the division is:

(i) in proportion to the professional services performed by each lawyer; or

(ii) made between lawyers who assume joint responsibility for the representation;

(2) the client consents in writing to the terms of the arrangement prior to the time of the association or referral proposed, including:

(i) the identity of all lawyers or law firms who will participate in the fee-sharing arrangement;

(ii) whether fees will be divided based on the proportion of services performed or by lawyers agreeing to assume joint responsibility for the representation; and

(iii) the share of the fee that each lawyer or law firm will receive or, if the division is based on the proportion of services performed, the basis on which the division will be made; and

(3) the aggregate fee does not violate (a).

(h) Every agreement that allows a lawyer or law firm to associate other counsel in the representation of a person, or to refer the person to other counsel for such representation, and that results in such an association with or referral to a different law firm or a lawyer in such a different firm, shall be confirmed by an arrangement conforming to (g). Consent by a client or a prospective client without knowledge of the information specified in (g)(2) does not constitute a confirmation within the meaning of this Rule. No lawyer shall collect or seek to collect a fee or expense in connection with any such agreement that is not confirmed in that way, except for:

(1) the reasonable value of legal services provided to that person; and

(2) the reasonable and necessary expenses actually incurred on behalf of that person.

(i) Paragraph (g) does not apply to payment made to a former partner or associate pursuant to a separation or retirement agreement, or to payment made to a lawyer referral program in accordance with law.

Terminology: See Rule 1.00 for definitions of "belief," "firm," "law firm," "reasonable," "represent," "writing," and "written."

Rule 1.05. Confidentiality

(a) Confidential information:

(1) in the case of a client or former client, is all information relating to representation of the client from whatever source, whether acquired by the lawyer personally or through an agent, other than information that is or becomes generally known or is readily obtainable from sources generally available to the public; and

(2) in the case of a prospective client, as described in Rule 1.17, is information furnished to the lawyer by that prospective client in the course of seeking legal representation, other than information that is or becomes generally known or is readily obtainable from sources generally available to the public.

(b) Except as permitted by (c), or required by (d), a lawyer shall not knowingly:

(1) disclose information the lawyer knows or reasonably should know is confidential; or

(2) use information the lawyer knows or reasonably should know is confidential to the disadvantage of a client, former client, or prospective client.

(c) A lawyer may disclose or use confidential information to the extent reasonably necessary:

(1) when the client, former client, or prospective client permits the lawyer to do so or provides informed consent to do so;

(2) except when otherwise instructed, when communicating with:

(i) representatives of the client, former client, or prospective client;

(ii) any affiliated lawyer or employees of the lawyer or affiliated lawyer; or

(iii) any persons who are required to be supervised in accordance with the requirements of Rule 5.03;

(3) when the lawyer reasonably believes it is necessary:

(i) to comply with a court order, law, or these Rules;

(ii) to prevent the client, former client, or prospective client from committing a criminal or fraudulent act;

(iii) to rectify the consequences of a client or former client's criminal or fraudulent act in the commission of which the lawyer's services had been used;

(iv) to prevent reasonably certain death or substantial bodily harm;

(v) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, former client, or prospective client;

(vi) to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client, former client, or prospective client was involved;

(vii) to respond to allegations in any proceeding concerning the lawyer's representation of the client or former client or discussion with a prospective client; or

(viii) to carry out the representation effectively, except when otherwise instructed by the client;

(4) when the lawyer seeks legal advice about the lawyer's compliance with these Rules.

(d) A lawyer shall disclose confidential information:

(1) when a lawyer has information clearly establishing that a client is likely to commit a criminal or fraudulent act that is likely to result in death or substantial bodily harm to a person, to the extent disclosure reasonably appears necessary to prevent the client from committing the criminal or fraudulent act.

(2) when required to do so by Rule 1.07(b)(2)(v)-(vi), 3.03(c)-(e), or 4.01(b).

Terminology: See Rule 1.00 for definitions of "affiliated," "informed consent," "knowingly," "known," "knows," "person," "reasonable," "reasonably," "reasonably believes," "reasonably should know," and "represents."

Rule 1.06. Conflicts of Interest

(a) A lawyer shall not, even with informed consent:

(1) represent opposing parties in the same matter before a tribunal;

(2) represent a client in a matter when the lawyer's representation of the client in that matter is or will be both materially and adversely limited by a personal interest of the lawyer or by that lawyer's responsibilities to another client, a former client, or a third person; or

(3) represent two or more clients in the same matter if the proposed representation would violate Rule 1.07.

(b) In all other situations in which it reasonably appears that representation may involve a conflict of interest, a lawyer may represent a client in a matter if the lawyer reasonably believes that the lawyer's representation of the client neither is nor will be materially limited by a personal interest of the lawyer or by the lawyer's responsibilities to another client, a former client, or a third person, but only if:

(1) the representation does not violate Rule 1.07; and

(2) the client provides informed consent, confirmed in writing.

(c) If a lawyer has accepted representation in violation of this Rule, or if a representation properly accepted becomes improper under this Rule, the lawyer shall promptly withdraw from one or more representations to the extent necessary for any remaining representation not to be in violation of these Rules.

(d) When a lawyer is prohibited by this Rule from representing a client, no affiliated lawyer who knows or reasonably should know of the prohibition shall represent that client, unless the prohibition is based on a personal interest of the prohibited lawyer, and the affiliated lawyer reasonably believes that the representation of the client will not be materially and adversely limited by the personal interest of the prohibited lawyer.

Terminology: See Rule 1.00 for definitions of "affiliated," "confirmed in writing," "informed consent," "knows," "person," "reasonably," "reasonably believes," "reasonably should know," "represents," and "tribunal."

Rule. 1.07. Conflicts of Interest: Multiple Clients in the Same Matter

(a) A lawyer shall not represent two or more clients in a matter if the representation would violate any of these Rules.

(b) A lawyer shall not represent two or more clients in a matter unless:

(1) the lawyer reasonably believes that:

(i) the representation does not violate Rule 1.06;

(ii) the clients can agree among themselves to a resolution of any material issue concerning the matter;

(iii) each client is capable of understanding what is in that client's best interest and making informed decisions;

(iv) the lawyer can deal impartially with each of the clients; and

(v) the representation is unlikely to result in material prejudice to the interests of any of the clients;

(2) prior to undertaking the representation, or as soon as practicable thereafter, the lawyer discloses to the clients in writing the following aspects of joint representation in the matter:

(i) that the client might gain or lose some advantages if represented by separate counsel;

(ii) that the lawyer cannot serve as an advocate for one client in the matter against any of the other clients, but instead must assist all of them in pursuing their common purposes, as a consequence of which each must be willing to make independent decisions without the lawyer's advice concerning whether to agree to any proposed resolution of any issues concerning the matter;

(iii) that the lawyer must deal impartially with each of the clients;

(iv) that information received by the lawyer or by any affiliated lawyer or firm from or on behalf of any jointly represented client concerning the matter may not be confidential or privileged as between the clients;

(v) that the lawyer will be required to disclose information concerning the matter to any jointly represented client if the lawyer knows that information would likely materially affect the position of that client, even if requested by another jointly represented client not to do so;

(vi) that the lawyer will be required to correct any false or misleading statement or omission concerning the matter made by or on behalf of any jointly represented client, if the lawyer knows failure to do so would likely materially affect the position of any client, even if requested by another jointly represented client not to do so;

(vii) that the lawyer may not be able to continue representing any of the clients if discharged by any one of them or if the lawyer is required to withdraw from representation under these Rules; and

(viii) that the representation of all clients by a single lawyer or firm will not necessarily expedite handling of the matter or reduce associated attorneys' fees and expenses; and

(3) the lawyer obtains each client's informed consent, confirmed in writing, to the representation after making the determinations required by (b)(1), and as soon as reasonably practicable after making the disclosures required by (b)(2).

(c) A lawyer representing two or more clients in a matter shall, with respect to that matter, conduct the representation in accordance with the determinations and disclosures set forth in this Rule, except that:

(1) the requirement that the lawyer disclose information described in (b)(2)(v) may be waived by all clients' informed consent that the lawyer will keep mutually agreed upon specified information confidential; and

(2) the lawyer may rely on this informed consent only if a disinterested lawyer would reasonably conclude that all clients could make adequately informed decisions about the matter without having the information otherwise required to be disclosed under (b)(2)(v).

(d) A lawyer representing multiple clients in a matter must withdraw from representing each client in the matter if the lawyer, for whatever reason, will not make disclosures required in:

(1) subparagraph (b)(2)(v), unless the failure to make such disclosures is permitted by (c); and

(2) subparagraph (b)(2)(vi).

(e) If a lawyer is prohibited from representing two or more persons in a matter, no lawyer or firm affiliated with the lawyer may do so if the representation by that other lawyer or firm would violate Rule 1.06.

(f) When a lawyer represents multiple clients pursuant to a court order or appointment, and the court requires or permits the lawyer to conduct the representation in accordance with standards that differ from those set out in (a)-(e), the lawyer may comply with those different standards notwithstanding this Rule.

Terminology: See Rule 1.00 for definitions of "affiliated," "confirmed in writing," "firm," "informed consent," "knows," "person," "reasonably," "reasonably believes," "represents," and "writing."

Rule 1.08. Conflicts of Interest: Prohibited Transactions

(a) A lawyer shall not enter into a business transaction with a client, other than a standard commercial transaction between the lawyer and the client for products or services that the client generally markets to others, unless:

(1) the lawyer reasonably believes that the terms of the transaction between the lawyer and the client:

(i) are fair and reasonable to the client; and

(ii) if known to the lawyer and not known to the client, are fully disclosed in a manner that can be reasonably understood by the client;

(2) the lawyer advises the client of the desirability of seeking, and gives the client a reasonable opportunity to seek, the advice of independent legal counsel on the transaction; and

(3) the client provides informed consent, in a writing signed by the client, to the material terms of the transaction and the lawyer's role in the transaction, including:

(i) whether the lawyer is representing the client in the transaction;

(ii) if applicable, the possible material adverse consequences to the lawyer-client relationship if the lawyer represents the client in connection with the transaction; and

(iii) anything of value the lawyer anticipates receiving as a result of the transaction other than those benefits explicitly set out in the terms of the transaction.

(b) A lawyer shall neither prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift, nor solicit any substantial gift from a client for the lawyer or for a person related to the lawyer, unless the lawyer or other person is related to the client. For the purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent, and other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(c) Prior to the conclusion of all aspects of the matter giving rise to a lawyer's representation, a lawyer shall not make or negotiate an agreement with a client, prospective client, or former client, or anyone acting on that person's behalf, that gives the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(d) A lawyer shall not provide financial assistance to a client in connection with contemplated or pending proceedings before a tribunal, except that:

(1) a lawyer may advance or guarantee the costs and expenses of such proceedings, and reasonably necessary medical and living expenses, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay costs and expenses of such proceedings on behalf of the client.

(e) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client provides informed consent;

(2) the lawyer reasonably believes that the lawyer's exercise of independent professional judgment on behalf of the client will not be affected; and

(3) information relating to representation of the client is protected as required by Rule 1.05.

(f) Except as otherwise authorized by law, a lawyer who represents two or more clients shall not make an aggregate settlement of the claims of or against that lawyer's clients, or in a criminal case an aggregated agreement to guilty or nolo contendere pleas, unless the lawyer obtains the informed consent of each client, confirmed in writing, after advising each client of:

(1) the total amount of the settlement or result of the agreement;

(2) the existence and nature of all claims, defenses, or pleas involved;

(3) the nature and extent of each client's participation in the settlement or agreement, whether by contribution to payment, share of receipts, or resolution of criminal charges;

(4) the total fees and costs to be paid to the lawyer from the proceeds, or by an opposing party or parties; and

(5) the method by which the costs are to be apportioned to each client.

(g) A lawyer shall not:

(1) make an agreement with a client prospectively limiting the lawyer's liability to a client for malpractice or other professional misconduct unless the client is represented by independent legal counsel in making the agreement;

(2) make an agreement with a client that requires a dispute between the lawyer and client to be referred to binding arbitration unless either:

(i) the client is represented by independent legal counsel in making the agreement; or

(ii) the lawyer discloses to the client, in a manner that can reasonably be understood by the client, the scope of the issues to be arbitrated and the fact that the client will waive a trial before a judge or jury on these issues and that the rights of appeal may be limited; or

(3) settle a claim or potential claim for malpractice or other professional misconduct with a client or former client of the lawyer not represented by independent legal counsel with respect to that claim unless the lawyer advises that person in writing of the desirability of seeking and gives a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

(h) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation in which the lawyer is representing a client, except that the lawyer may:

(1) acquire a lien granted by law to secure the lawyer's fee or expenses; and

(2) contract in a civil case with a client for a contingent fee that is permissible under Rule 1.04.

(i) When one lawyer is prohibited by this Rule from engaging in particular conduct, no affiliated lawyer who knows or reasonably should know of the prohibition shall engage in that conduct.

Terminology: See Rule 1.00 for definitions of "affiliated," "confirmed in writing," "informed consent," "known," "knows," "person," "reasonable," "reasonably," "reasonably believes," "reasonably should know," "represents," "tribunal," and "writing."

Rule 1.09. Conflicts of Interest: Former Client

(a) Unless the former client provides informed consent, confirmed in writing:

(1) a lawyer who personally has formerly represented a client in a matter shall not thereafter knowingly represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client; and

(2) if a lawyer prohibited by (a)(1) has left the firm with which the lawyer was affiliated at the time the lawyer personally represented the former client, no lawyer presently affiliated with that firm, and who knows of the prohibition, shall knowingly represent another person in the same or a substantially related matter to that in which the formerly affiliated lawyer represented the client if any lawyer remaining in the firm has information protected by Rule 1.05 or 1.09(d) that is material to the matter.

(b) Unless the former client provides informed consent, confirmed in writing, a lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was affiliated previously represented a client:

(1) whose interests are materially adverse to the interests of that person; and

(2) about whom the lawyer acquired information protected by Rule 1.05 or 1.09(d) that is material to the matter.

(c) Unless the former client provides informed consent, confirmed in writing:

(1) a lawyer who personally has formerly represented a client in a matter shall not thereafter knowingly represent another person in a matter adverse to the former client in which such other person questions the validity of the lawyer's services or work product for the former client; and

(2) if a lawyer prohibited by (c)(1) has left the firm with which the lawyer was affiliated at the time the lawyer provided the services or work product to the former client, no lawyer presently affiliated with that firm, and who knows of the prohibition, shall knowingly represent a person in a matter that requires a challenge to the formerly affiliated lawyer's services or work product for the former client.

(d) A lawyer who personally has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules provide, or when the information is or becomes generally known or is readily obtainable from sources generally available to the public; or

(2) disclose information relating to the representation except as these Rules provide.

(e) For purposes of this Rule, matters are "substantially related" if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter.

Terminology: See Rule 1.00 for definitions of "affiliated," "confirmed in writing," "firm," "informed consent," "knowingly," "knows," "person," "personally represents," and "represents."

Rule 1.10. Special Conflicts of Interest: Former and Current Government Officers and Employees

(a) Except as law may otherwise expressly permit, a lawyer shall not personally represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency has provided informed consent, confirmed in writing, to the representation.

(b) No lawyer affiliated with a lawyer prohibited by (a) who knows of the prohibition may represent the client in such a matter unless:

(1) the prohibited lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate government agency disclosing the affiliation of the prohibited lawyer and the screening measures adopted to ensure compliance with this Rule.

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee may not personally represent a private client whose interests are adverse to that person in a matter in which the lawyer knows or reasonably should know the information could be used to the material disadvantage of that person. As used in this Rule, the term "confidential government information" means information that has been obtained under government authority and that, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and that is not otherwise available to the public.

(d) No lawyer affiliated with a lawyer prohibited by (c) who knows of the prohibition may represent the private client in the matter unless the prohibited lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

(e) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee shall not:

(1) participate in a matter involving a former private client if doing so would violate Rule 1.09;

(2) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency provides its informed consent, confirmed in writing; or

(3) negotiate for private employment with any person who is involved as a party or as a lawyer for a party in a matter in which the lawyer is participating personally and substantially, except that a court lawyer to an adjudicatory official may negotiate for private employment in accordance with Rule 1.11.

(f) As used in this Rule, the term "matter" includes:

(1) any adjudicatory proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other comparable particular action or transaction involving a specific party or parties, but not regulation-making or rule-making proceedings or assignments; and

(2) any other action or transaction covered by conflict of interest statutes or by conflict of interest rules of the appropriate government agency.

(g) As used in this Rule, the term "private client" means any person, including a government agency, who is represented by the lawyer when the lawyer is engaged in the private practice of law.

(h) As used in this Rule, the term "screened" means that the law firm:

(1) has instituted measures adequate to prevent participation of the prohibited lawyer in the matter and to protect from disclosure information that the prohibited lawyer is obligated to protect under applicable law or these Rules; and

(2) can demonstrate that the prohibited lawyer did not disclose the information described in (h)(1) before the law firm implemented the screening measures described in (h)(1).

Terminology: See Rule 1.00 for definitions of "adjudicatory official," "adjudicatory proceeding," "affiliated," "confirmed in writing," "informed consent," "knows," "law firm," "person," "personally represents," "reasonably should know," "represents," "substantially," and "written."

Rule 1.11. Special Conflicts of Interest: Adjudicatory Officials, Third-Party Neutrals, and Court Lawyers

(a) A lawyer shall not personally represent anyone in connection with a matter in which the lawyer participated personally and substantially as an adjudicatory official or a court lawyer to an adjudicatory official, or as a third-party neutral in a nonbinding proceeding, unless all parties to the proceeding provide informed consent, confirmed in writing.

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a pending matter in which the lawyer is participating personally and substantially as an adjudicatory official, or as a third-party neutral in a nonbinding proceeding. A lawyer serving as a court lawyer to an adjudicatory official may negotiate for employment with a party or lawyer involved in a pending matter in which the court lawyer is participating personally and substantially, but only after the court lawyer has notified the adjudicatory official.

(c) If a lawyer is prohibited from representation by (a), an affiliated lawyer who knows of the prohibition shall not represent a client in the matter unless:

(1) the prohibited lawyer is timely screened from any participation in the matter in accordance with Rule 1.10(h) and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the parties and any appropriate tribunal disclosing the affiliation of the prohibited lawyer and the screening measures adopted to ensure compliance with this Rule.

(d) For purposes of this Rule, "court lawyer" includes law clerks, briefing attorneys, and staff attorneys, whether or not assigned to a particular adjudicatory official, as well as persons who were not yet licensed as lawyers at the time they began providing services to a tribunal.

Terminology: See Rule 1.00 for definitions of "adjudicatory official," "affiliated," "confirmed in writing," "informed consent," "knows," "person," "personally represents," "represents," "substantially," "tribunal," and "written."

Rule 1.12. Organization as a Client

(a) Notwithstanding that a lawyer reports to and takes direction from an organization's duly authorized constituents, a lawyer employed or retained to provide legal services for an organization represents that organization and shall proceed as reasonably necessary in the best legal interest of the organization at all times, including the situations described in (d).

(b) A lawyer shall explain that the lawyer represents the organization rather than an owner, director, officer, employee, or other constituent of the organization when the lawyer knows or reasonably should know the organization's interests are adverse to the interests of that constituent, or when an explanation appears reasonably necessary to avoid misunderstanding on the part of that constituent.

(c) A lawyer shall not jointly represent the organization and an owner, director, officer, employee, or other constituent of the organization in a matter unless the joint representation is in conformity with Rule 1.07.

(d) A lawyer who represents an organization shall initiate reasonable remedial actions whenever the lawyer has information clearly establishing that:

(1) an owner, director, officer, employee, or other constituent of the organization has committed or intends to commit a violation of a legal obligation to the organization or a violation of law that reasonably may be imputed to the organization;

(2) the violation is likely to result in substantial injury to the organization; and

(3) the violation is related to a matter within the scope of the lawyer's representation of the organization.

(e) Unless otherwise required by law or these Rules, reasonable remedial actions may include, but are not limited to, one or more of the following:

(1) asking for reconsideration of the matter;

(2) advising that a separate legal opinion on the matter be sought for presentation to an appropriate authority within the organization; and

(3) referring the matter to a higher authority within the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act on behalf of the organization as determined by applicable law.

(f) If, despite the lawyer's initiation of reasonable remedial action, the organization continues to pursue, or fails to address in a timely and appropriate manner, a matter called to its attention by the lawyer pursuant to (d) and (e), then the lawyer may disclose confidential information to the extent permitted by Rule 1.05.

(g) A lawyer who resigns or is terminated from representing an organization shall comply with Rule 1.16. Upon doing so, a lawyer is excused from proceeding further as set out in (d), (e), and (f). Rule 1.05 governs any further obligations regarding confidential information.

Terminology: See Rule 1.00 for definitions of "knows," "reasonable," "reasonably," "reasonably should know," "represents," and "substantial."

Rule 1.13. Prohibited Sexual Relations [new, renumbered]

(a) A lawyer shall not condition the representation of a client or prospective client, or the quality of such representation, on having any person engage in sexual relations with the lawyer.

(b) A lawyer shall not solicit or accept sexual relations as payment of fees.

(c) A lawyer shall not have sexual relations with a client that the lawyer is personally representing unless the lawyer and client are married to each other, or are engaged in an ongoing consensual sexual relationship that began before the representation.

Terminology: See Rule 1.00 for definitions of "person," "personally represents," and "represents."

Rule 1.14. Diminished Capacity [new, renumbered]

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment, or for another reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial, or other harm unless action is taken, and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action. Such action may include, but is not limited to, consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator, or guardian.

(c) When taking protective action pursuant to (b), the lawyer may disclose the client's confidential information to the extent the lawyer reasonably believes is necessary to protect the client's interests, unless otherwise prohibited by law.

Terminology: See Rule 1.00 for definitions of "reasonably," "reasonably believes," "represents," and "substantial."

Rule 1.15. Safekeeping Property [renumbered]

(a) When a lawyer receives property in connection with a representation that at the time of receipt belongs in whole or in part to a client or third person, the lawyer shall safeguard the property in trust and hold it separate from the lawyer's own property until distributed in accordance with (f) or (g). In addition, the lawyer shall:

(1) deposit any funds in one or more accounts designated as trust accounts, maintained in the state where the lawyer's office is situated, or elsewhere with the informed consent of the client or third person;

(2) identify any other client property as such and safeguard it appropriately; and

(3) create and maintain complete records of all trust account funds and other property required to be held in trust by this Rule and preserve those records for a period of five years from the termination of the representation.

(b) Notwithstanding (a), a lawyer may deposit the lawyer's own funds in a client trust account for the purpose of paying service charges on that account.

(c) A lawyer shall deposit unearned fees and advanced expenses into a client trust account, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property, a lawyer shall notify with reasonable promptness:

(1) any client of the receipt and proposed distribution of such funds or other property, provided the client has a right to any portion of such funds or other property; and

(2) any third person who the lawyer reasonably believes is entitled to notice of the lawyer's receipt of such funds or other property.

(e) A lawyer shall render with reasonable promptness a full accounting of funds or other property held by that lawyer in trust:

(1) to a client when required by these Rules or requested by the client; and

(2) to a third person who requests the accounting and who the lawyer reasonably believes has a right to any portion of such funds or other property, unless a court order relieves the lawyer from providing the full accounting.

(f) If the lawyer receives notice from the client or a third person of a dispute concerning the proposed distribution, the lawyer shall proceed in accordance with (g). Otherwise, the lawyer shall deliver with reasonable promptness to the client or third person such funds or other property that each is entitled to receive.

(g) When, in the course of representation, a lawyer is in possession of funds or other property in which two or more persons, one of whom may be the lawyer, claim interests, and a dispute arises concerning their respective interests, the lawyer shall retain the disputed portion of the funds or other property in a client trust account, deposit it into the registry of a court, or safeguard it in any other manner agreeable to those claiming an interest. The lawyer shall distribute with reasonable promptness all portions of the property as to which the interests are not in dispute.

Terminology: See Rule 1.00 for definitions of "informed consent," "person," "reasonable," "reasonably believes," and "represents."

Rule 1.16. Declining or Terminating Representation [renumbered]

(a) Except as stated in (c), a lawyer shall not represent a client or, when representation has commenced, shall withdraw from the representation of a client, if:

(1) the representation will result in violation of law or these Rules;

(2) the lawyer's physical or mental condition materially impairs the lawyer's fitness to represent the client; or

(3) the lawyer is discharged.

(b) Except as required by (a), a lawyer shall not withdraw from representing a client unless:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) a client insists upon pursuing an objective or taking action that the lawyer considers repugnant or imprudent or with which the lawyer has fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) A lawyer shall comply with these Rules, applicable rules of practice or procedure, and applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, including giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payments of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by law only if such retention will not prejudice the client in the subject matter of the representation.

Terminology: See Rule 1.00 for definitions of "fitness," "reasonable," "reasonably," "reasonably believes," "represents," "substantially," and "tribunal."

Rule 1.17. Prospective Clients [new]

(a) A person who in good faith discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) A lawyer who has had a discussion with a prospective client shall not use or disclose confidential information learned in the discussion, except as provided in Rule 1.05 or (d)(2).

(c) A lawyer who has received confidential information during a discussion with a prospective client shall not represent a client with interests materially adverse to those of the prospective client in the same or a substantially related matter, except as provided in (d)(1) or (d)(2). No lawyer in a firm with which that lawyer is affiliated may knowingly represent a client in such a matter.

(d) When a lawyer has received confidential information during a discussion with a prospective client, representation of a client with interests materially adverse to those of the prospective client in the same or a substantially related matter is permissible if:

(1) the prospective client has provided informed consent, confirmed in writing, to the representation; or

(2) the lawyer conditioned the discussion with the prospective client on the prospective client's informed consent that no information disclosed during the discussion would be confidential or prohibit the lawyer from representing a different client in the matter.

(e) For purposes of this Rule, matters are "substantially related" if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the discussion with the prospective client would materially advance a client's position in a subsequent matter.

Terminology: See Rule 1.00 for definitions of "affiliated," "confirmed in writing," "firm," "informed consent," "knowingly," "person," "represents," and "substantially."

Section II. Counselor

Rule 2.01. Advisor

In representing a client, a lawyer shall exercise independent professional judgment and give candid advice.

Terminology: See Rule 1.00 for a definition of "represents."

Rule 2.02. Evaluation for Use by Third Persons

A lawyer shall not provide an evaluation of a matter affecting a client for the use of someone other than the client unless:

(a) the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client; and

(b) the client provides informed consent.

Terminology: See Rule 1.00 for definitions of "informed consent," "person," and "reasonably believes."

Section III. Advocate

Rule 3.01. Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless the lawyer reasonably believes there is a nonfrivolous basis for doing so.

Terminology: See Rule 1.00 for a definition of "reasonably believes."

Rule 3.02. Minimizing the Burdens and Delays of Litigation

In the course of litigation, a lawyer shall not take a position that unreasonably increases the costs or other burdens of the case or that unreasonably delays resolution of the matter.

Terminology: See Rule 1.00 for a definition of "reasonably."

Rule 3.03. Candor Toward a Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of material fact or law to a tribunal;

(2) fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(4) offer or use evidence that the lawyer knows to be false.

(b) Notwithstanding any other of these Rules, a lawyer may refuse to offer or use evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes, but does not know, is false.

(c) If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered or used material evidence and the lawyer comes to know of its falsity, the lawyer shall make a reasonable effort to persuade the client to authorize the lawyer to correct or withdraw the false evidence. If those efforts are unsuccessful, the lawyer shall take other reasonable remedial measures, including, if necessary, disclosure of the falsehood to the tribunal.

(d) A lawyer who represents a client in an adjudicatory proceeding and who knows that a person intends to engage, is engaging, or has engaged in criminal or fraudulent conduct related to the proceeding, shall take reasonable remedial measures, including, if necessary, disclosure of the falsehood to the tribunal.

(e) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts that are known to the lawyer, whether or not the facts are adverse, and that the lawyer reasonably believes are necessary to enable the tribunal to make an informed decision.

(f) The obligations stated in this Rule continue until remedial legal measures are no longer reasonably possible.

Terminology: See Rule 1.00 for definitions of "adjudicatory proceeding," "knowingly," "known," "knows," "person," "reasonable," "reasonably," "reasonably believes," "represents," and "tribunal."

Rule 3.04. Fairness in Adjudicatory Proceedings

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence; in anticipation of a dispute unlawfully alter, destroy, or conceal a document or other material that a lawyer would reasonably believe has potential or actual evidentiary value; or counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or pay, offer to pay, or acquiesce in the offer or payment of compensation to a witness or other entity contingent upon the content of the testimony of the witness or the outcome of the case. But a lawyer may advance, guarantee, or acquiesce in the payment of:

(1) expenses reasonably incurred by a witness in attending or testifying;

(2) reasonable compensation to a witness for loss of time in attending or testifying; and

(3) a reasonable fee for the professional services of an expert witness;

(c) except as stated in (d), in representing a client before a tribunal:

(1) habitually violate an established rule of procedure or evidence;

(2) state or allude to any matter that the lawyer does not reasonably believe is relevant to such proceeding or that will not be supported by admissible evidence, or assert personal knowledge of facts in issue except when testifying as a witness;

(3) state a personal opinion as to the justness of a cause, credibility of a witness, culpability of a civil litigant, or guilt or innocence of an accused, except that a lawyer may argue the lawyer's analysis of the evidence and other permissible considerations for any position or conclusion with respect to the matters stated in this Rule;

(4) ask any question intended to degrade a witness or other person except when the lawyer reasonably believes that the question will lead to relevant and admissible evidence; or

(5) engage in conduct intended to disrupt the proceedings;

(d) knowingly disobey, or advise the client to disobey, an obligation under the standing rules of or a ruling by a tribunal, except for an open refusal based either on an assertion that no valid obligation exists or on the client's willingness to accept any sanctions arising from such disobedience; or

(e) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) the person is a relative or an employee or other agent of a client; and

(2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

Terminology: See Rule 1.00 for definitions of "adjudicatory proceeding," "competent," "knowingly," "person," "reasonable," "reasonably," "reasonably believes," "represents," and "tribunal."

Rule 3.05. Maintaining the Impartiality of a Tribunal

A lawyer shall not:

(a) seek to influence a tribunal concerning a pending matter by means prohibited by law or applicable rules of practice or procedure;

(b) except as otherwise permitted by law and not prohibited by applicable rules of practice or procedure, communicate or cause another to communicate ex parte with a tribunal for the purpose of influencing the tribunal concerning a pending matter other than:

(1) in the course of official proceedings in the cause;

(2) in writing if the lawyer promptly delivers a copy of the writing to opposing counsel or the adverse party if the adverse party is not represented by a lawyer; or

(3) orally upon adequate notice to opposing counsel or to the adverse party if the adverse party is not represented by a lawyer.

Terminology: See Rule 1.00 for definitions of "represents," "tribunal," and "writing."

Rule 3.06. Maintaining the Integrity of the Jury System

(a) A lawyer shall not:

(1) conduct or cause another, by financial support or otherwise, to conduct a vexatious or harassing investigation of a venire member or juror; or

(2) seek to influence a venire member or juror concerning the merits of a pending matter by means prohibited by law or applicable rules of practice or procedure.

(b) Prior to discharge of the jury from further consideration of a matter, a lawyer connected with the matter shall not communicate with or cause another to communicate with anyone the lawyer knows to be a venire member, juror, or alternate juror, except in the course of official proceedings.

(c) During the trial of a case, a lawyer not connected with the case shall not communicate with or cause another to communicate with a juror or alternate juror concerning the matter.

(d) After discharge of the jury from further consideration of a matter with which the lawyer was connected, the lawyer shall not ask questions of or make comments to a member of that jury that are calculated merely to harass the juror or to influence the juror's actions in future jury service.

(e) All restrictions imposed by this Rule on a lawyer also apply to communications with or investigations of a venire member's or juror's family member.

(f) A lawyer shall reveal promptly to the court improper conduct, of which the lawyer has knowledge, by a venire member or juror, or by another toward a venire member, juror, or venire member's or juror's family member.

Terminology: See Rule 1.00 for a definition of "knows."

Rule 3.07. Trial Publicity

(a) A lawyer who is participating or who has participated in the investigation or litigation of a matter shall not make an extrajudicial statement the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicatory proceeding.

(b) This Rule does not preclude a lawyer from:

(1) responding to allegations of misconduct made against that lawyer, provided that the lawyer complies with the limitations in (a); or

(2) making a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this subparagraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(c) No lawyer affiliated in a firm or government agency with a lawyer subject to (a) shall make a statement prohibited by (a).

Terminology: See Rule 1.00 for definitions of "adjudicatory proceeding," "affiliated," "firm," "knows," "reasonable," "reasonably should know," and "substantial."

Rule 3.08. Lawyer as a Witness

(a) A lawyer shall not accept or continue employment as an advocate before a tribunal in a contemplated or pending adjudicatory proceeding if the lawyer knows or reasonably should know that the lawyer is or may be a witness necessary to establish an essential fact on behalf of the lawyer's client, unless:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony;

(3) the testimony relates to the nature and value of legal services rendered in the case;

(4) the lawyer is a party to the action and is appearing pro se; or

(5) the lawyer has promptly notified opposing counsel that the lawyer expects to testify in the adjudicatory proceeding and disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer shall not continue as an advocate in a pending adjudicatory proceeding if the lawyer knows or reasonably should know that the lawyer will be compelled to furnish testimony that will be substantially adverse to the lawyer's client, unless the client provides informed consent.

(c) Without the client's informed consent, a lawyer may not act as an advocate in an adjudicatory proceeding in which another lawyer in the lawyer's firm is prohibited by (a) or (b) from serving as an advocate.

(d) If the lawyer to be called as a witness could not also serve as an advocate under this Rule, that lawyer shall not take an active role before the tribunal in the presentation of the matter.

Terminology: See Rule 1.00 for definitions of "adjudicatory proceeding," "believes," "firm," "informed consent," "knows," "reasonably should know," "substantial," "substantially," and "tribunal."

Rule 3.09. Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

(a) not prosecute or threaten to prosecute a charge the prosecutor knows is not supported by probable cause;

(b) not conduct or assist in a custodial interrogation of an accused unless the prosecutor has made reasonable efforts to be assured that the accused has been advised of any right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) not initiate or encourage efforts to obtain from an unrepresented accused a waiver of important pre-trial, trial, or post-trial rights;

(d) timely disclose to the defense all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and tribunal all unprivileged mitigating information known to the pros-

ecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; and

(e) exercise reasonable care to prevent persons employed or controlled by the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.07.

Terminology: See Rule 1.00 for definitions of "known," "knows," "person," "reasonable," and "tribunal."

Rule 3.10. Advocate in Nonadjudicatory Proceedings

A lawyer representing a client before a legislative or administrative body in a nonadjudicatory proceeding shall disclose that the appearance is in a representative capacity and shall conform to Rules 3.04(a) through (d), 3.05(a), and 4.01.

Terminology: See Rule 1.00 for definitions of "adjudicatory proceeding," and "represents."

Section IV. Non-Client Relationship

Rule 4.01. Truthfulness in Statements to Others

In the course of representing a client, a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or

(b) fail to disclose a material fact to a third person when disclosure is necessary to avoid making the lawyer a party to a criminal act or knowingly assisting a fraudulent act perpetrated by a client.

Terminology: See Rule 1.00 for definitions of "knowingly," "person," and "represents."

Rule 4.02. Communication With One Represented by Counsel

(a) In representing a client, a lawyer shall not communicate or cause or encourage another to communicate about the subject of the representation with a person, organization, or government entity the lawyer knows to be represented by another lawyer regarding that subject, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

(b) In representing a client, a lawyer shall not communicate or cause another to communicate about the subject of representation with a person or organization a lawyer knows to be employed or retained for the purpose of conferring with or advising another lawyer about the subject of the representation, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

(c) For the purpose of this Rule, "organization" or "government entity" means a person who:

(1) has managerial responsibility within an organization or government entity that relates to the subject of the representation; or

(2) is employed by such organization or government entity and whose act or omission in connection with the subject of representation may make the organization or government entity vicariously liable for such act or omission.

(d) When a person, organization, or government entity that is represented by a lawyer in a matter seeks advice regarding that matter from another lawyer, the second lawyer is not prohibited by (a) from giving such advice without notifying or seeking consent of the first lawyer.

Terminology: See Rule 1.00 for definitions of "knows," "person," and "represents."

Rule 4.03. Dealing With an Unrepresented Person

A lawyer who communicates on behalf of a client with a person who is not represented by counsel shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

Terminology: See Rule 1.00 for definitions of "knows," "person," "reasonable," "reasonably should know," and "represents."

Rule 4.04. Respect for Rights of a Third Person

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to harass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer shall not present, participate in presenting, or threaten to present:

(1) criminal or disciplinary charges solely to gain an advantage in a civil matter; or

(2) civil, criminal, or disciplinary charges against a complainant, witness, or potential witness in a bar disciplinary proceeding solely to prevent participation by the complainant, witness, or potential witness in the bar disciplinary proceeding.

Terminology: See Rule 1.00 for definitions of "person," "represents," and "substantial."

Section V. Law Firms and Associations

Rule 5.01. Responsibilities of a Managerial or Supervisory Lawyer

A lawyer shall be subject to discipline because of another lawyer's violation of these Rules if the lawyer has managerial authority in the law firm in which the other lawyer practices or has direct supervisory authority over the other lawyer, and that managerial or supervisory lawyer:

(a) orders, encourages, or knowingly permits the conduct involved; or

(b) with knowledge of the other lawyer's violation of these Rules, knowingly fails to take reasonable remedial action within the scope of the lawyer's authority to avoid or mitigate the consequences of the other lawyer's violation.

Terminology: See Rule 1.00 for definitions of "law firm," "knowingly," and "reasonable."

Rule 5.02. Responsibilities of a Supervised Lawyer

(a) A lawyer is bound by these Rules notwithstanding that the lawyer acted at the direction of another person.

(b) A supervised lawyer does not violate these Rules if that lawyer acts in accordance with a managerial or supervisory lawyer's reasonable resolution of an arguable question of professional duty.

Terminology: See Rule 1.00 for definitions of "person" and "reasonable."

Rule 5.03. Responsibilities Regarding Nonlawyers

A lawyer shall be subject to discipline for the conduct of a nonlawyer employed or retained by or affiliated with a lawyer or law firm that would be a violation of these Rules if engaged in by a lawyer, if:

(a) the lawyer has direct supervisory authority over the nonlawyer and fails to make reasonable efforts to ensure that the nonlawyer's conduct is compatible with the lawyer's professional obligations;

(b) the lawyer orders, encourages, or knowingly permits the conduct involved; or

(c) the lawyer:

(1) has managerial authority in the law firm that has retained, employed, or affiliated the nonlawyer, or has direct supervisory authority over such nonlawyer; and

(2) with knowledge of such misconduct by the nonlawyer knowingly fails to take reasonable remedial action within the scope of the lawyer's authority to avoid or mitigate the consequences of that nonlawyer's misconduct.

Terminology: See Rule 1.00 for definitions of "affiliated," "knowingly," "law firm," and "reasonable."

Rule 5.04. Professional Independence of a Lawyer

(a) A lawyer or law firm shall not share or promise to share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate, or a lawful court order, may provide for the payment of money, over a reasonable period of time, to the lawyer's estate to or for the benefit of the lawyer's heirs or personal representatives, beneficiaries, or former spouse, after the lawyer's death or as otherwise provided by law or court order;

(2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation that fairly represents the services rendered by the deceased lawyer;

(3) a lawyer or law firm may include nonlawyer employees in a retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and

(4) a lawyer may share legal fees with a lawyer referral service in accordance with law.

(b) A lawyer shall not form a firm with a nonlawyer if any of the activities of the firm consists of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

Terminology: See Rule 1.00 for definitions of "firm," "partner," "person," and "reasonable."

Rule 5.05. Unauthorized Practice of Law[5]

A lawyer shall not:

(a) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or

(b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

Terminology: See Rule 1.00 for a definition of "person."

Rule 5.06. Restrictions on Right to Practice

A lawyer shall not participate in offering or making:

(a) a firm, shareholders, operating, employment, or other similar type of agreement that restricts the rights of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a suit or controversy, except that as part of the settlement of a disciplinary proceeding against a lawyer an agreement may be made placing restrictions on the right of that lawyer to practice.

Terminology: See Rule 1.00 for a definition of "firm."

Rule 5.07. Prohibited Discriminatory Activities [renumbered]

(a) A lawyer shall not willfully, in connection with an adjudicatory proceeding, except as provided in (b), manifest, by words or conduct, bias or prejudice based on race, color, national origin, religion, disability, age, sex, or sexual orientation towards any person involved in that proceeding in any capacity.

(b) Paragraph (a) does not apply to a lawyer's decision whether to represent a particular person in connection with an adjudicatory proceeding, or to the process of jury selection, or to communications protected as "confidential information" under these Rules. See Rule 1.05(a)-(b). It also does not preclude advocacy in connection with an adjudicatory proceeding involving any of the factors set out in (a) if that advocacy:

(1) is necessary in order to address any substantive or procedural issues raised by the proceeding; and

(2) is conducted in conformity with applicable rulings and orders of a tribunal and applicable rules of practice or procedure.

Terminology: See Rule 1.00 for definitions of "adjudicatory proceeding," "person," and "tribunal."

Section VI. Public Service

Rule 6.01. Appointments by a Tribunal

(a) When a tribunal appoints a lawyer to represent a person, the lawyer shall represent the person until the representation is terminated in accordance with Rule 1.16(c).

(b) A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

(1) representing the client is likely to result in violation of law or these Rules;

(2) representing the client is likely to result in an unreasonable financial burden on the lawyer; or

(3) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

Terminology: See Rule 1.00 for definitions of "person," "reasonable," "represents," and "tribunal."

Rule 6.02. Membership in Legal Services Organization [renumbered]

A lawyer serving as a director, officer, or member of a legal services organization, apart from the law firm in which the lawyer practices, shall not knowingly participate in a decision or action of the organization if:

(a) participating in the decision would violate the lawyer's obligations to a client under Rule 1.06; or

(b) the decision could have a material adverse effect on the representation of any client of the organization whose interests are adverse to a client of the lawyer.

Terminology: See Rule 1.00 for definitions of "knowingly," "law firm," and "represents."

Rule 6.03. Law Reform Activities Affecting Client Interests [new]

A lawyer may serve as a director, officer, or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows the interests of a client may be materially benefited by a decision in which the lawyer participates, the lawyer shall disclose that fact to the organization but need not identify the client.

Terminology: See Rule 1.00 for a definition of "knows."

Section VII. Information About Legal Services[6]

Rule 7.01. Firm Names and Letterhead

(a) A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that the names of a professional corporation, professional association, limited liability partnership, or professional limited liability company may contain "P.C.," "P.A.," "L.L.P.," "P.L.L.C.," or similar symbols indicating the nature of the organization, and if otherwise lawful a firm may use as, or continue to include in, its name the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession. Nothing herein shall prohibit a married woman from practicing under her maiden name.

(b) A firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer occupying a judicial, legislative, or public executive or administrative position shall not be used in the name of a firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(d) A lawyer shall not hold himself or herself out as being a partner, shareholder, or associate with one or more other lawyers unless they are in fact partners, shareholders, or associates.

(e) A lawyer shall not advertise in the public media or seek professional employment by any communication under a trade or fictitious name, except that a lawyer who practices under a firm name as authorized by paragraph (a) of this Rule may use that name in such advertisement or communication but only if that name is the firm name that appears on the lawyer's letterhead, business cards, office sign, fee contracts, and with the lawyer's signature on pleadings and other legal documents.

(f) A lawyer shall not use a firm name, letterhead, or other professional designation that violates Rule 7.02(a).

Terminology: See Rule 1.00 for definitions of "firm," "partner," and "substantial."

Rule 7.02. Communications Concerning a Lawyer's Services

(a) A lawyer shall not make or sponsor a false or misleading communication about the qualifications or the services of any lawyer or firm. A communication is false or misleading if it:

(1) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(2) contains any reference in a public media advertisement to past successes or results obtained unless

(i) the communicating lawyer or member of the law firm served as lead counsel in the matter giving rise to the recovery, or was primarily responsible for the settlement or verdict,

(ii) the amount involved was actually received by the client,

(iii) the reference is accompanied by adequate information regarding the nature of the case or matter and the damages or injuries sustained by the client, and

(iv) if the gross amount received is stated, the attorney's fees and litigation expenses withheld from the amount are stated as well;

(3) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate these rules or other law;

(4) compares the lawyer's services with other lawyers' services, unless the comparison can be substantiated by reference to verifiable, objective data;

(5) states or implies that the lawyer is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official;

(6) designates one or more specific areas of practice in an advertisement in the public media or in a solicitation communication unless the advertising or soliciting lawyer is competent to handle legal matters in each such area of practice; or

(7) uses an actor or model to portray a client of the lawyer or law firm.

(b) Rule 7.02(a)(6) does not require that a lawyer be certified by the Texas Board of Legal Specialization at the time of advertising in a specific area of practice, but such certification shall conclusively establish that such lawyer satisfies the requirements of Rule 7.02(a)(6) with respect to the area(s) of practice in which such lawyer is certified.

(c) A lawyer shall not advertise in the public media or state in a solicitation communication that the lawyer is a specialist except as permitted under Rule 7.04.

(d) Any statement or disclaimer required by these rules shall be made in each language used in the advertisement or solicitation communication with respect to which such required statement or disclaimer relates; provided however, the mere statement that a particular language is spoken or understood shall not alone result in the need for a statement or disclaimer in that language.

Terminology: See Rule 1.00 for definitions of "competent," "firm," and "tribunal."

Rule 7.03. Prohibited Solicitations and Payments

(a) A lawyer shall not by in-person contact, or by regulated telephone or other electronic contact as defined in paragraph (f), seek professional employment concerning a matter arising out of a particular occurrence or event, or series of occurrences or events, from a prospective client or nonclient who has not sought the lawyer's advice regarding employment or with whom the lawyer has no family or past or present attorney-client relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. Notwithstanding the provisions of this paragraph, a lawyer for a qualified nonprofit organization may communicate with the organization's members for the purpose of educating the members to understand the law, to recognize legal problems, to make intelligent selection of counsel, or to use legal services. In those situations where in-person or telephone or other electronic contact is permitted by this paragraph, a lawyer shall not have such a contact with a prospective client if:

(1) the communication involves coercion, duress, fraud, overreaching, intimidation, undue influence, or harassment;

(2) the communication contains information prohibited by Rule 7.02(a); or

(3) the communication contains a false, fraudulent, misleading, deceptive, or unfair statement or claim.

(b) A lawyer shall not pay, give, or offer to pay or give anything of value to a person not licensed to practice law for soliciting prospective clients for, or referring clients or prospective clients to, any lawyer or firm, except that a lawyer may pay reasonable fees for advertising and public relations services rendered in accordance with this Rule and may pay the usual charges of a lawyer referral service that meets the requirements of Occupational Code Title 5, Subtitle B, Chapter 952.

(c) A lawyer, in order to solicit professional employment, shall not pay, give, advance, or offer to pay, give, or advance anything of value, other than actual litigation expenses and other financial assistance as permitted by Rule 1.08(d), to a prospective client or any other person; provided however, this provision does not prohibit the payment of legitimate referral fees as permitted by Rule 1.04(g) or by paragraph (b) of this Rule.

(d) A lawyer shall not enter into an agreement for, charge for, or collect a fee for professional employment obtained in violation of Rule 7.03(a), (b), or (c).

(e) A lawyer shall not participate with or accept referrals from a lawyer referral service unless the lawyer knows or reasonably believes that the lawyer referral service meets the requirements of Occupational Code Title 5, Subtitle B, Chapter 952.

(f) As used in paragraph (a), "regulated telephone or other electronic contact" means any electronic communication initiated by a lawyer or by any person acting on behalf of a lawyer or law firm that will result in the person contacted communicating in a live, interactive manner with any other person by telephone or other electronic means. For purposes of this Rule a website for a lawyer or law firm is not considered a communication initiated by or on behalf of that lawyer or firm.

Terminology: See Rule 1.00 for definitions of "firm," "fraud," "fraudulent," "knows," "person," "reasonable," and "reasonably believes."

Rule 7.04. Advertisements in the Public Media

(a) A lawyer shall not advertise in the public media by stating that the lawyer is a specialist, except as permitted under Rule 7.04(b) or as follows:

(1) A lawyer admitted to practice before the United States Patent Office may use the designation "Patents," "Patent Attorney," or "Patent Lawyer," or any combination of those terms. A lawyer engaged in the trademark practice may use the designation "Trademark," "Trademark Attorney," or "Trademark Lawyer," or any combination of those terms. A lawyer engaged in patent and trademark practice may hold himself or herself out as specializing in "Intellectual Property Law," "Patent, Trademark, Copyright Law and Unfair Competition," or any of those terms.

(2) A lawyer may permit his or her name to be listed in lawyer referral service offices that meet the requirements of Occupational Code Title 5, Subtitle B, Chapter 952, according to the areas of law in which the lawyer will accept referrals.

(3) A lawyer available to practice in a particular area of law or legal service may distribute to other lawyers and publish in legal directories and legal newspapers (whether written or electronic) a listing or an announcement of such availability. The listing shall not contain a false or misleading representation of special competence or experience, but may contain the kind of information that traditionally has been included in such publications.

(b) A lawyer who advertises in the public media:

(1) shall publish or broadcast the name of at least one lawyer who is responsible for the content of such advertisement; and

(2) shall not include a statement that the lawyer has been certified or designated by an organization as possessing special competence or a statement that the lawyer is a member of an organization the name of which implies that its members possess special competence, except that:

(i) a lawyer who has been awarded a Certificate of Special Competence by the Texas Board of Legal Specialization in the area so advertised, may state with respect to each such area, "Board Certified, [area of specialization]--Texas Board of Legal Specialization;" and

(ii) a lawyer who is a member of an organization the name of which implies that its members possess special competence, or who has been certified or designated by an organization as possessing special competence, may include a factually accurate statement of such membership or may include a factually accurate statement, "Certified [area of specialization] [name of certifying organization]," but such statements may be made only if that organization has been accredited by the Texas Board of Legal Specialization as a bona fide organization that admits to membership or grants certification only on the basis of objective, exacting, publicly available standards (including high standards of individual character, conduct, and reputation) that are reasonably relevant to the special training or special competence that is implied and that are in excess of the level of training and competence generally required for admission to the Bar; and

(3) shall, in the case of infomercial or comparable presentation, state that the presentation is an advertisement:

(i) both verbally and in writing at its outset, after any commercial interruption, and at its conclusion; and

(ii) in writing during any portion of the presentation that explains how to contact a lawyer or law firm.

(c) Separate and apart from any other statements, the statements referred to in paragraph (b) shall be displayed conspicuously and in language easily understood by an ordinary consumer.

(d) Subject to the requirements of Rules 7.02 and 7.03 and of paragraphs (a), (b), and (c) of this Rule, a lawyer may, either directly or through a public relations or advertising representative, advertise services in the public media, such as (but not limited to) a telephone directory, legal directory, newspaper or other periodical, outdoor display, radio, television, the internet, or electronic or digital media.

(e) All advertisements in the public media for a lawyer or firm must be reviewed and approved in writing by the lawyer or a lawyer in the firm.

(f) A copy or recording of each advertisement in the public media and relevant approval referred to in paragraph (e), and a record of when and where the advertisement was used, shall be kept by the lawyer or firm for four years after its last dissemination.

(g) In advertisements in the public media, any person who portrays a lawyer whose services or whose firm's services are being advertised, or who narrates an advertisement as if he or she were such a lawyer, shall be one or more of the lawyers whose services are being advertised.

(h) If an advertisement in the public media by a lawyer or firm discloses the willingness or potential willingness of the lawyer or firm to render services on a contingent fee basis, the advertisement must state whether the client will be obligated to pay all or any portion of the court costs and, if a client may be liable for other expenses, this fact must be disclosed. If specific percentage fees or fee ranges of contingent fee work are disclosed in such advertisement, it must also disclose whether the

percentage is computed before or after expenses are deducted from the recovery.

(i) A lawyer who advertises in the public media a specific fee or range of fees for a particular service shall conform to the advertised fee or range of fees for the period during which the advertisement is reasonably expected to be in circulation or otherwise expected to be effective in attracting clients, unless the advertisement specifies a shorter period; but in no instance is the lawyer bound to conform to the advertised fee or range of fees for a period of more than one year after the date of publication.

(j) A lawyer or firm who advertises in the public media must disclose the geographic location, by city or town, of the lawyer's or firm's principal office. A lawyer or firm shall not advertise the existence of any office other than the principal office unless:

(1) that other office is staffed by a lawyer at least three days a week; or

(2) the advertisement states:

(i) the days and times during which a lawyer will be present at that office, or

(ii) that meetings with lawyers will be by appointment only.

(k) A lawyer may not, directly or indirectly, pay all or a part of the cost of an advertisement in the public media for a lawyer not in the same firm unless such advertisement discloses the name and address of the financing lawyer, the relationship between the advertising lawyer and the financing lawyer, and whether the advertising lawyer is likely to refer cases received through the advertisement to the financing lawyer.

(l) If an advertising lawyer knows or should know at the time of an advertisement in the public media that a case or matter will likely be referred to another lawyer or firm, a statement of such fact shall be conspicuously included in such advertisement.

(m) No motto, slogan or jingle that is false or misleading may be used in any advertisement in the public media.

(n) A lawyer shall not include in any advertisement in the public media the lawyer's association with a lawyer referral service unless the lawyer knows or reasonably believes that the lawyer referral service meets the requirements of Occupational Code Title 5, Subtitle B, Chapter 952.

(o) A lawyer may not advertise in the public media as part of an advertising cooperative or venture of two or more lawyers not in the same firm unless each such advertisement:

(1) states that the advertisement is paid for by the cooperating lawyers;

(2) names each of the cooperating lawyers

(3) sets forth conspicuously the special competency requirements required by Rule 7.04(b) of lawyers who advertise in the public media;

(4) does not state or imply that the lawyers participating in the advertising cooperative or venture possess professional superiority, are able to perform services in a superior manner, or possess special competence in any area of law advertised, except that the advertisement may contain the information permitted by Rule 7.04(b)(2); and

(5) does not otherwise violate the Texas Disciplinary Rules of Professional Conduct.

(p) Each lawyer who advertises in the public media as part of an advertising cooperative or venture shall be individually responsible for:

(1) ensuring that each advertisement does not violate this Rule; and

(2) complying with the filing requirements of Rule 7.07.

(q) If these rules require that specific qualifications, disclaimers, or disclosures of information accompany communications concerning a lawyer's services, the required qualifications, disclaimers, or disclosures must be presented in the same manner as the communication and with equal prominence.

(r) A lawyer who advertises on the internet must display the statements and disclosures required by Rule 7.04.

Terminology: See Rule 1.00 for definitions of "competence," "law firm," "knows," "person," "reasonably," "reasonably believes," "writing," and "written."

Rule 7.05. Prohibited Written, Electronic, or Digital Solicitations

(a) A lawyer shall not send, deliver, or transmit, or knowingly permit or knowingly cause another person to send, deliver, or transmit, a written, audio, audiovisual, digital media, recorded telephone message, or other electronic communication to a prospective client for the purpose of obtaining professional employment on behalf of any lawyer or law firm if:

(1) the communication involves coercion, duress, fraud, overreaching, intimidation, undue influence, or harassment;

(2) the communication contains information prohibited by Rule 7.02 or fails to satisfy each of the requirements of Rule 7.04(a) through (c), and (g) through (q) that would be applicable to the communication if it were an advertisement in the public media; or

(3) the communication contains a false, fraudulent, misleading, deceptive, or unfair statement or claim.

(b) Except as provided in paragraph (f) of this Rule, a written, electronic, or digital solicitation communication to prospective clients for the purpose of obtaining professional employment:

(1) shall, in the case of a non-electronically transmitted written communication, be plainly marked "ADVERTISEMENT" on its first page, and on the face of the envelope or other packaging used to transmit the communication. If the written communication is in the form of a self-mailing brochure or pamphlet, the word "ADVERTISEMENT" shall be:

(i) in a color that contrasts sharply with the background color; and

(ii) in a size of at least 3/8" vertically or three times the vertical height of the letters used in the body of such communication, whichever is larger;

(2) shall, in the case of an electronic mail message, be plainly marked "ADVERTISEMENT" in the subject portion of the electronic mail and at the beginning of the message's text;

(3) shall not be made to resemble legal pleadings or other legal documents;

(4) shall not reveal on the envelope or other packaging or electronic mail subject line used to transmit the communication, or pamphlet, the nature of the legal problem of the prospective client or non-client; and

(5) shall disclose how the lawyer obtained the information prompting the communication to solicit professional employment if such contact was prompted by a specific occurrence involving the recipient of the communication or a family member of such person(s).

(c) Except as provided in paragraph (f) of this Rule, an audio, audiovisual, digital media, recorded telephone message, or other electronic communication sent to prospective clients for the purpose of obtaining professional employment:

(1) shall, in the case of any such communication delivered to the recipient by nonelectronic means, plainly and conspicuously state in writing

on the outside of any envelope or other packaging used to transmit the communication, that it is an "ADVERTISEMENT";

(2) shall not reveal on any such envelope or other packaging the nature of the legal problem of the prospective client or non-client;

(3) shall disclose, either in the communication itself or in accompanying transmittal message, how the lawyer obtained the information prompting such audio, audiovisual, digital media, recorded telephone message, or other electronic communication to solicit professional employment, if such contact was prompted by a specific occurrence involving the recipient of the communication or a family member of such person(s);

(4) shall, in the case of a recorded audio presentation or a recorded telephone message, plainly state that it is an advertisement prior to any other words being spoken and again at the presentation's or message's conclusion: and

(5) shall, in the case of an audio-visual or digital media presentation, plainly state that the presentation is an advertisement:

(i) both verbally and in writing at the outset of the presentation and again at its conclusion; and

(ii) in writing during any portion of the presentation that explains how to contact a lawyer or law firm.

(d) All written, audio, audio-visual, digital media, recorded telephone message, or other electronic communications made to a prospective client for the purpose of obtaining professional employment of a lawyer or law firm must be reviewed and either signed by or approved in writing by the lawyer or a lawyer in the firm.

(e) A copy of each written, audio, audio-visual, digital media, recorded telephone message, or other electronic solicitation communication, the relevant approval thereof, and a record of the date of each such communication; the name, address, telephone number, or electronic address to which each such communication was sent; and the means by which each such communication was sent shall be kept by the lawyer or firm for four years after its dissemination.

(f) The provisions of paragraphs (b) and (c) of this Rule do not apply to a written, audio, audiovisual, digital media, recorded telephone message, or other form of electronic solicitation communication:

(1) directed to a family member or a person with whom the lawyer had or has an attorney client relationship;

(2) that is not motivated by or concerned with a particular past occurrence or event or a particular series of past occurrences or events, and also is not motivated by or concerned with the prospective client's specific existing legal problem of which the lawyer is aware;

(3) if the lawyer's use of the communication to secure professional employment was not significantly motivated by a desire for, or by the possibility of obtaining, pecuniary gain; or

(4) that is requested by the prospective client.

Terminology: See Rule 1.00 for definitions of "fraud," "fraudulent," "knowingly," "law firm," "person," "writing," and "written."

Rule 7.06. Prohibited Employment

(a) A lawyer shall not accept or continue employment in a matter when that employment was procured by conduct prohibited by any of Rules 7.01 through 7.05, 8.04(a)(2), or 8.04(a)(9), engaged in by that lawyer personally or by any other person whom the lawyer ordered, encouraged, or knowingly permitted to engage in such conduct.

(b) A lawyer shall not accept or continue employment in a matter when the lawyer knows or reasonably should know that employment was procured by conduct prohibited by any of Rules 7.01 through 7.05, 8.04(a)(2), or 8.04(a)(9), engaged in by any other person or entity that is a shareholder, partner, or member of, an associate in, or of counsel to that lawyer's firm; or by any other person whom any of the foregoing persons or entities ordered, encouraged, or knowingly permitted to engage in such conduct.

(c) A lawyer who has not violated paragraph (a) or (b) in accepting employment in a matter shall not continue employment in that matter once the lawyer knows or reasonably should know that the person procuring the lawyer's employment in the matter engaged in, or ordered, encouraged, or knowingly permitted another to engage in, conduct prohibited by any of Rules 7.01 through 7.05, 8.04(a)(2), or 8.04(a)(9) in connection with the matter unless nothing of value is given thereafter in return for that employment.

Terminology: See Rule 1.00 for definitions of "firm," "knowingly," "knows," "partner," "person," and "reasonably should know."

Rule 7.07. Filing Requirements for Public Advertisements and Written, Recorded, Electronic, or Other Digital Solicitations

(a) Except as provided in paragraphs (c) and (e) of this Rule, a lawyer shall file with the Advertising Review Committee of the State Bar of Texas, no later than the mailing or sending by any means, including electronic, of a written, audio, audio-visual, digital or other electronic solicitation communication:

(1) a copy of the written, audio, audio-visual, digital, or other electronic solicitation communication being sent or to be sent to one or more prospective clients for the purpose of obtaining professional employment, together with a representative sample of the envelopes or other packaging in which the communications are enclosed;

(2) a completed lawyer advertising and solicitation communication application; and

(3) a check or money order payable to the State Bar of Texas for the fee set by the Board of Directors. Such fee shall be for the sole purpose of defraying the expense of enforcing the rules related to such solicitations.

(b) Except as provided in paragraph (e) of this Rule, a lawyer shall file with the Advertising Review Committee of the State Bar of Texas, no later than the first dissemination of an advertisement in the public media, a copy of each of the lawyer's advertisements in the public media. The filing shall include:

(1) a copy of the advertisement in the form in which it appears or will appear upon dissemination, such as a videotape, audiotape, DVD, CD, a print copy, or a photograph of outdoor advertising;

(2) a production script of the advertisement setting forth all words used and describing in detail the actions, events, scenes, and background sounds used in such advertisement together with a listing of the names and addresses of persons portrayed or heard to speak, if the advertisement is in or will be in a form in which the advertised message is not fully revealed by a print copy or photograph;

(3) a statement of when and where the advertisement has been, is, or will be used;

(4) a completed lawyer advertising and solicitation communication application form; and

(5) a check or money order payable to the State Bar of Texas for the fee set by the Board of Directors. Such fee shall be for the sole purpose of defraying the expense of enforcing the rules related to such advertisements.

(c) Except as provided in paragraph (e) of this Rule, a lawyer shall file with the Advertising Review Committee of the State Bar of Texas no later than its first posting on the internet or other comparable network of computers information concerning the lawyer's or lawyer's firm's website. As used in this Rule, a "website" means a single or multiple page file, posted on a computer server, which describes a lawyer or law firm's practice or qualifications, to which public access is provided through publication of a uniform resource locator (URL). The filing shall include:

(1) the intended initial access page of a website;

(2) a completed lawyer advertising and solicitation communication application form; and

(3) a check or money order payable to the State Bar of Texas for the fee set by the Board of Directors. Such fee shall be for the sole purpose of defraying the expense of enforcing the rules related to such websites.

(d) A lawyer who desires to secure an advance advisory opinion, referred to as a request for preapproval, concerning compliance of a contemplated solicitation communication or advertisement may submit to the Lawyer Advertising Review Committee, not less than thirty (30) days prior to the date of first dissemination, the material specified in paragraph (a) or (b) or the intended initial access page submitted pursuant to paragraph (c), including the application form and required fee; provided however, it shall not be necessary to submit a videotape or DVD if the videotape or DVD has not then been prepared and the production script submitted reflects in detail and accurately the actions, events, scenes, and background sounds that will be depicted or contained on such videotapes or DVDs, when prepared, as well as the narrative transcript of the verbal and printed portions of such advertisement. If a lawyer submits an advertisement or solicitation communication for pre-approval, a finding of noncompliance by the Advertising Review Committee is not binding in a disciplinary proceeding or disciplinary action, but a finding of compliance is binding in favor of the submitting lawyer as to all materials actually submitted for pre-approval if the representations, statements, materials, facts, and written assurances received in connection therewith are true and are not misleading. The finding of compliance constitutes admissible evidence if offered by a party.

(e) The filing requirements of paragraphs (a), (b), and (c) do not extend to any of the following materials, provided those materials comply with Rule 7.02(a) through (c) and, where applicable, Rule 7.04(a) through (c):

(1) an advertisement in the public media that contains only part or all of the following information,

(i) the name of the lawyer or firm and lawyers associated with the firm, with office addresses, electronic addresses, telephone numbers, office and telephone service hours, telecopier numbers, and a designation of the profession such as "attorney," "lawyer," "law office," or "firm";

(ii) the particular areas of law in which the lawyer or firm specializes or possesses special competence;

(iii) the particular areas of law in which the lawyer or firm practices or concentrates or to which it limits its practice;

(iv) the date of admission of the lawyer or lawyers to the State Bar of Texas, to particular federal courts, and to the bars of other jurisdictions;

(v) technical and professional licenses granted by this state and other recognized licensing authorities;

(vi) foreign language ability;

(vii) fields of law in which one or more lawyers are certified or designated, provided the statement of this information is in compliance with Rule 7.02(a) through (c);

(viii) identification of prepaid or group legal service plans in which the lawyer participates;

(ix) the acceptance or nonacceptance of credit cards;

(x) any fee for initial consultation and fee schedule;

(xi) other publicly available information concerning legal issues, not prepared or paid for by the firm or any of its lawyers, such as news articles, legal articles, editorial opinions, or other legal developments or events, such as proposed or enacted rules, regulations, or legislation;

(xii) in the case of a website, links to other websites;

(xiii) that the lawyer or firm is a sponsor of a charitable, civic, or community program or event, or is a sponsor of a public service announcement;

(xiv) any disclosure or statement required by these rules; and

(xv) any other information specified from time to time in orders promulgated by the Supreme Court of Texas;

(2) an advertisement in the public media that:

(i) identifies one or more lawyers or a firm as a contributor to a specified charity or as a sponsor of a specified charitable, community, or public interest program, activity, or event; and

(ii) contains no information about the lawyers or firm other than names of the lawyers or firm or both, location of the law offices, and the fact of the sponsorship or contribution;

(3) a listing or entry in a regularly published law list;

(4) an announcement card stating new or changed associations, new offices, or similar changes relating to a lawyer or firm, or a tombstone professional card;

(5) in the case of communications sent, delivered, or transmitted to, rather than accessed by, intended recipients, a newsletter, whether written, digital, or electronic, provided that it is sent, delivered, or transmitted mailed only to:

(i) existing or former clients;

(ii) other lawyers or professionals; or

(iii) members of a nonprofit organization that meets the following conditions: the primary purposes of the organization do not include the rendition of legal services; the recommending, furnishing, paying for, or educating persons regarding legal services is incidental and reasonably related to the primary purposes of the organization; the organization does not derive a financial benefit from the rendition of legal services by a lawyer; and the person for whom the legal services are rendered, and not the organization, is recognized as the client of the lawyer who is recommended, furnished, or paid by the organization;

(6) a solicitation communication that is not motivated by or concerned with a particular past occurrence or event or a particular series of past occurrences or events, and also is not motivated by or concerned with the prospective client's specific existing legal problem of which the lawyer is aware;

(7) a solicitation communication if the lawyer's use of the communication to secure professional employment was not significantly motivated by a desire for, or by the possibility of obtaining, pecuniary gain; or

(8) a solicitation communication that is requested by the prospective client.

(f) If requested by the Advertising Review Committee, a lawyer shall promptly submit information to substantiate statements or representations made or implied in any advertisement in the public media and/or written solicitation communication by which the lawyer seeks paid professional employment.

Terminology: See Rule 1.00 for definitions of "competence," "firm," "person," and "written."

Section VIII. Maintaining the Integrity of the Profession

Rule 8.01. Bar Admission, Reinstatement, and Disciplinary Matters

An applicant for admission to the bar, a petitioner for reinstatement to the bar, or a lawyer in connection with a bar admission application, a petition for reinstatement, or a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact; or

(b) fail to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admission, reinstatement, or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.05.

Terminology: See Rule 1.00 for definitions of "knowingly" and "person."

Rule 8.02. Judicial and Legal Officials

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, an adjudicatory official, or a public legal officer, or of a candidate for election or appointment to a judicial or legal office.

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Texas Code of Judicial Conduct.

(c) A lawyer who is a candidate for an elective public office shall comply with the applicable provisions of the Texas Election Code.

Terminology: See Rule 1.00 for definitions of "adjudicatory official" and "knows."

Rule 8.03. Reporting Professional Misconduct

(a) Except as permitted in (c) or (d), a lawyer who knows that another lawyer has committed a violation of applicable rules of professional conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate disciplinary authority.

(b) Except as permitted in (c) or (d), a lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) A lawyer who knows or suspects that another lawyer or judge whose conduct the lawyer is required to report pursuant to (a) or (b) is impaired by chemical dependency on alcohol or drugs or by mental illness may report that person to an approved peer assistance program rather than to an appropriate disciplinary authority. If a lawyer elects that option, the lawyer's report to the approved peer assistance program shall disclose any disciplinary violations that the reporting lawyer would otherwise have to disclose to the authorities referred to in (a) and (b).

(d) This rule does not require disclosure of information protected by:

(1) Rule 1.05, if the lawyer acquired the information in the course of or by reason of representing a lawyer to whom the information pertains; or

(2) any statutory or regulatory provisions applicable to the counseling activities of the approved peer assistance program.

(e) A lawyer shall not make, or assist a client in making, any agreement that restricts a lawyer's rights or obligations under this Rule.

(f) Within thirty (30) days of a finding of guilt or an order deferring adjudication by any court for the commission of an Intentional or Serious Crime, as defined by the Texas Rules of Disciplinary Procedure, a lawyer licensed in Texas shall report, in writing, to the Office of the Chief Disciplinary Counsel, the finding of guilt, including any verdict of guilty, plea of guilty or no contest, or deferred adjudication for an Intentional or Serious Crime. The appeal of the finding of guilt or order of deferred adjudication does not stay the duty to report.

Terminology: See Rule 1.00 for definitions of "fitness," "knows," "represents," and "substantial."

Rule 8.04. Misconduct

(a) A lawyer shall not:

(1) violate these Rules, knowingly assist or induce another to do so, or do so through the acts of another, whether or not such violation occurred in the course of a client-lawyer relationship;

(2) commit a serious crime or commit any other criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;

(3) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(4) engage in conduct constituting obstruction of justice;

(5) state or imply an ability to influence improperly a government agency or official;

(6) knowingly assist a judge or judicial officer in conduct that is a violation of law or applicable rules of judicial conduct;

(7) violate any disciplinary or disability order or judgment;

(8) fail to timely furnish to the Chief Disciplinary Counsel's office or a district grievance committee a response or other information as required by the Texas Rules of Disciplinary Procedure, unless the lawyer in good faith timely asserts a privilege or other legal ground for failure to do so;

(9) engage in conduct that constitutes barratry as defined by the law of this state;

(10) fail to comply with the Texas Rules of Disciplinary Procedure relating to notification of a lawyer's cessation of practice;

(11) engage in the practice of law when the lawyer is on inactive status or when the lawyer's right to practice has been suspended or terminated, including but not limited to situations in which a lawyer's right to practice has been administratively suspended for failure to timely pay required fees or assessments or for failure to comply with Article XII of the State Bar Rules relating to Minimum Continuing Legal Education; or

(12) violate any laws of this state relating to the professional conduct of lawyers and to the practice of law.

(b) As used in (a)(2) of this Rule, "serious crime" means barratry; any felony involving moral turpitude; any misdemeanor involving theft, embezzlement, or fraudulent or reckless misappropriation of money or other property; or any attempt, conspiracy, or solicitation of another to commit any of the foregoing crimes.

Terminology: See Rule 1.00 for definitions of "fitness," "fraud," "fraudulent," and "knowingly."

Rule 8.05. Jurisdiction[7]

(a) A lawyer is subject to the disciplinary authority of this state, if admitted to practice in this state or if specially admitted by a court of this state for a particular proceeding. In addition to being answerable for his or her conduct occurring in this state, any such lawyer also may be disciplined in this state for conduct occurring in another jurisdiction or resulting in lawyer discipline in another jurisdiction, if it is professional misconduct under Rule 8.04.

(b) A lawyer admitted to practice in this state is also subject to the disciplinary authority of this state for:

(1) an advertisement in the public media that does not comply with these rules and that is broadcast or disseminated in another jurisdiction, even if the advertisement complies with the rules governing lawyer advertisements in that jurisdiction, if the broadcast or dissemination of the advertisement is intended to be received by prospective clients in this state and is intended to secure employment to be performed in this state; and

(2) a written solicitation communication that does not comply with these rules and that is mailed in another jurisdiction, even if the communication complies with the rules governing written solicitation communications by lawyers in that jurisdiction, if the communication is mailed to an addressee in this state or is intended to secure employment to be performed in this state.

Terminology: See Rule 1.00 for a definition of "written."

Section IX. Severability of Rules

Rule 9.01. Severability

If any provision of these Rules or any application of these Rules to any person or circumstances is held invalid, such invalidity shall not affect any other provision or application of these Rules that can be given effect without the invalid provision or application and, to this end, the provisions of these Rules are severable.

Terminology: See Rule 1.00 for a definition of "person."

[1] Tex. Disciplinary R. Prof'l Conduct ¶ 10, pmbl

[2] Id. ¶ 7.

[3] The Task Force included Thomas H. Watkins (Chair), Judge Robert Pitman, Dawn Miller, Mark White, Christine McKeeman, Susan Saab Fortney, Robert Paul Schuwerk, Ken Raines, Luke Soules, Eduardo Rodriguez, Vincent Perini, Rob Kepple, Beryl Crowley, Sarilee Ferguson, Steve Moyik, and Kenneth Raney.

[4]The composition of the State Bar Committee changed during the relevant time period. The following members participated in recommending revisions to the Texas Disciplinary Rules of Professional Conduct: Lillian B. Hardwick (current Chair), Linda Eads (former Chair), Gary R. Gurwitz, Leila Safi Hobson, Robert Paul Schuwerk (also a Task Force member), Byron F. Egan, Cullen M. Godfrey, Rebecca Ann Gregory, Edna Isabella Ramon, Marcus F. Schwartz, Harlow L. Sprouse, John F. Sutton Jr., Gregory Max Hasley, Michelle Jordan, W. Amon Burton Jr., Patricia Chamblin, Hugh Massey Ray III, Walter W. Steele Jr., James H. Wallenstein, James E. Brill, Ralph H. Brock, William B. Mateja, Mark Perlmutter, James C. Winton, Sally Emerson, and Paul McGreal. G. Allan Van Fleet also participated as a liaison for the State Bar of Texas Board of Directors.

[5] The Court is still considering proposed revisions to Rule 5.05. At this time, there are no changes to the text of the rule; however, the Court incorporated a terminology reference directly after the rule.

[6] The Rules in Section VII were revised significantly in 2005. Neither the Court Task Force nor the State Bar Committee recommended additional changes to these Rules at this time. In this Order, with the exception of modifying a reference in Rule 7.03(c) to renumbered Rule 1.04(g), the Court likewise does not propose any revisions to these Rules.

[7] The Court is still considering proposed revisions to Rule 8.05. At this time, there are no changes to the text of the rule; however, the Court incorporated a terminology reference directly after the rule.

TRD-200904855
Kennon L. Peterson
Rules Attorney
Supreme Court of Texas
Filed: October 26, 2009

♦ ♦ ♦

Texas Department of Transportation

Public Hearing Notice - Highway Project Selection Process

In accordance with Transportation Code, §201.602, the Texas Transportation Commission (commission) will conduct a public hearing to receive data, comments, views, and/or testimony concerning the commission's highway project selection process and the relative importance of the various criteria on which the commission bases its project selection decisions. It is emphasized that the subject of the hearing will be the procedure by which projects are selected and not the merits or details of specific projects themselves.

The public hearing will be held on Thursday, November 19, 2009, at 9:00 a.m., in the Ric Williamson Hearing Room of the DeWitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas. The hearing will be held in accordance with the procedures specified in 43 TAC §1.5. Any interested person may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the commission as may be necessary to ensure a complete record. While any person with pertinent comments or testimony concerning the selection procedure will be granted an opportunity to present them during the course of the hearing, the commission reserves the right to restrict testimony in terms of time and repetitive comment. Organizations, associations, or groups are encouraged to present their commonly-held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend the hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Brent Dollar, Government and Public Affairs Division, at 125 East 11th St., Austin, Texas 78701-2383, or (512) 463-8955 at least two working days prior to the hearing so that appropriate arrangements can be made.

Highway project selection information will be available at the department's Finance Division, 150 East Riverside Drive, Austin, Texas 78704, or (512) 486-5063. Written comments may be submitted to the Texas Department of Transportation, Attention: Brian Ragland, P.O. Box 149217, Austin, Texas 78714-9217. The deadline for receipt of comments is 5:00 p.m. on December 21, 2009.

TRD-200904889
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: October 28, 2009

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Public Hearing Notice - Statewide Transportation Improvement Program

The Texas Department of Transportation (department) will hold a public hearing on Wednesday, November 18, 2009 at 10:00 a.m. at the Texas Department of Transportation, 200 East Riverside Drive, Room 1A-2, Austin, Texas to receive public comments on the November Quarterly 2009 Revisions to the Statewide Transportation Improvement Program (STIP) for FY 2008 - 2011. The STIP reflects the federally funded transportation projects in the FY 2008 - 2011 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP includes both state and federally funded projects for the nonattainment areas of Beaumont, Dallas-Fort Worth, El Paso, and Houston. The STIP also contains information on federally funded projects in rural areas that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135 require each designated MPO and the state, respectively, to develop a TIP as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.).

Section 134(j) requires an MPO to develop its TIP in cooperation with the state and affected transportation operators, to provide an opportunity for interested parties to participate in the development of the program, and further requires the TIP to be updated at least once every four years and approved by the MPO and the Governor or Governor's designee. Section 135(g) requires the state to develop a STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

In accordance with 43 TAC §15.8(d), a copy of the proposed November Quarterly 2009 Revisions to the FY 2008 - 2011 STIP will be available for review, at the time the notice of hearing is published, at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, and on the department's website at:

www.txdot.gov

Persons wishing to review the November Quarterly 2009 Revisions to the FY 2008 - 2011 STIP may do so online or contact the Transportation Planning and Programming Division at (512) 486-5033.

Persons wishing to speak at the hearing may register in advance by notifying Lori Morel, Transportation Planning and Programming Division, at (512) 486-5033 not later than Tuesday, November 17, 2009, or they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact the Government and Public Affairs Division, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-9957. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Further information on the FY 2008 - 2011 STIP may be obtained from Lori Morel, Transportation Planning and Programming Division, 118 East Riverside Drive, Austin, Texas 78704, (512) 486-5033. Interested parties who are unable to attend the hearing may submit comments to James L. Randall, P.E., Director, Transportation Planning and Programming Division, 118 East Riverside Drive, Austin, Texas 78704. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by Monday, December 21, 2009 at 4:00 p.m.

TRD-200904863
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: October 27, 2009

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Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

http://www.txdot.gov/public_involvement/hearings_meetings.

Or visit www.txdot.gov, click on Public Involvement and click on Hearings and Meetings.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PILOT.

TRD-200904864
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: October 27, 2009

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The Texas A&M University System

Notification of Award

In accordance with the provisions of Texas Government Code, Chapter 2254, The Texas A&M University System has entered into a consulting contract for asbestos consulting services. The consultant will provide asbestos program design and air monitoring services in conjunction with various assigned projects throughout The Texas A&M University System.

The Name and Address of the consultant are as follows: Benas Environmental Services, Inc., 324 Crooked Tree Court, Coppell, Texas 75019.

The A&M System will pay an unspecified amount greater than $25,000.00 to this consultant over the course of the contract. The contract will begin on October 19, 2009 and shall terminate in August 2012 unless renewed for an additional two years.

If any, the consultant will submit documents, films, recordings, or reports compiled by the consultant under the contract to TAMUS, no later than one year after completion of services.

Any questions regarding this posting should be directed to: Don Barwick, HUB and Procurement Manager, Office of HUB and Procurement Programs, The Texas A&M University System, 200 Technology

Way, Ste. 1273, College Station, TX 77845, Voice: (979) 458-6410, E-mail: dbarwick@tamu.edu.

TRD-200904835
Don Barwick
HUB and Procurement Manager
The Texas A&M University System
Filed: October 23, 2009

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University of North Texas

Public Notice - Award of Major Consulting Contract

Description of Activities Consultant Will Conduct:

The selected consulting firm will be responsible for assisting UNT in evaluating assessing and recommending of the pathway to accreditation of a joint PharmD program at UNT. The consultant must be able to provide a timeline and budget and be able to evaluate the following: (1) Faculty expertise needed and administrative needs; (2) Space requirements, including laboratory space; (3) Library resources needed; (4) Potential funding for research in pharmacy; (5) Assessment of pre-pharmacy programs and expectations for entering students; (6) Clinical placement of opportunities in Denton and Dallas for students; (7) Clinical appointments for faculty in hospitals or elsewhere; (8) Initial costs as well as ongoing costs; (9) Potential of partnerships with HSC; (10) Size of classes to achieve maximum benefit.

Name and Business Address of Consultant:

Dr. Rosalie Sagraves

857 Mount Vernon Court

Naperville, IL 60563

Total Value and Beginning and Ending Dates of Contract:

Value: $60,000.00

Beginning Date: October 26, 2009

Ending Date: July 31, 2010

Dates on Which Documents, Films, Recordings, or Reports that Consultant is required to present are due:

Date: Consultant is required to provide several written reports and plans on various dates.

TRD-200904861
Carrie Stoeckert
Assistant Director of PPS
University of North Texas
Filed: October 27, 2009

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Texas State University System

Request for Qualifications

In accordance with Texas Government Code, Chapter 2254, Subchapter A, the Professional Services Procurement Act, and with the delegation of authority from the Texas State Auditor's Office per Texas Government Code, §321.020, the Texas State University System (TSUS) Office of Audits and Analysis is seeking responses (qualification statements) to this solicitation from qualified individuals or firms (Respondents) to perform the professional services ("Work" or "services") described below for the performance of audit activities for Lamar University, Lamar Institute of Technology, Lamar State College-Orange, and Lamar State College-Port Arthur.

The requested audit services include, specifically, a review of expenditures relating to Hurricane Ike (including compliance with legislation regarding proportionate spending among insurance reimbursements, FEMA, and state appropriations) and the internal audit portion of the Texas Higher Education Coordinating Board (THECB) facilities audits for the four campuses. Other work will be on an agreed-upon basis as determined by the System Director of the Office of Audits and Analysis (System Director) and the selected Respondent.

The selected Respondent will work closely with the System Director and the Director of Audits and Analysis-Lamar Campuses (Lamar Director) in performing audit services, and shall:

- Ensure compliance with relevant applicable auditing standards and Texas Government Code, Chapter 2102, in the performance of services;

- Complete work in a timely manner; and

- Maintain a high degree of confidentiality throughout the process.

Responses shall contain, as a minimum, the following information:

- A description of the Respondent's qualifications for performing such services;

- A description of prior experience in performing audit-related services at Texas state agencies and/or institutions of higher education;

- A description of prior experience in providing audit services related to reviews of expenditures resulting from hurricanes;

- A description of experience in auditing transactions in a Banner environment;

- A description of the Respondent's efforts to encourage and develop the participation of minorities and women in the provision of the services.

Responses shall be evaluated based on the criteria below:

- Prior experience in providing audit services related to reviews of expenditures resulting from hurricanes;

- Experience in auditing transactions in a Banner environment; and

- Experience in performing audit services at Texas state agencies and/or institutions of higher education.

If additional information or clarification is required, the System Director shall make written requests to the appropriate Respondent(s) and will require all responses to be made in writing.

It is the intent of the System Office of Audits and Analysis to enter into one contract with the selected Respondent to perform the services described in this document. The System Director, in consultation with the Chair of the TSUS Finance and Audit Committee, shall be the sole judge in making this determination. Upon selection, the successful Respondent shall be requested to provide pricing for the described professional services an estimate for budgetary purposes.

If your firm is interested, please submit a written response by **November 20, 2009, 5:00 p.m.** to:

Ms. Carole Fox, CPA

Director, Office of Audits and Analysis

Texas State University System

Thomas J. Rusk Building

200 E. 10th Street, Suite 600

Austin, TX 78701-2407

Please ensure the response envelope is clearly marked "RESPONSE TO RFQ."

If you have questions, please submit your questions via email to carole.fox@tsus.edu.

TRD-200904810
Carole Fox
System Auditor
Texas State University System
Filed: October 21, 2009

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Texas Water Development Board

Notice of Public Hearing

The Texas Water Development Board (Board) will conduct a public hearing on Thursday, December 17, 2009, in Room 170, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701 to receive public comments on proposed amendments to the 2007 State Water Plan, Water for Texas - 2007, in accordance with Texas Water Code §16.053(r) and 31 TAC §358.3(a). The hearing will be conducted during the Board's regular December 17, 2009, public meeting at 11:00 a.m., in Room 170, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701.

After the public hearing, the Board will consider adopting the proposed amendment at its regular Board meeting on December 17, 2009.

The Board seeks to incorporate changes adopted by the Region L regional water planning group relating to the replacement of a water management strategy with a new water management strategy that, in accordance with HB 3776 of the 80th Texas Legislature, thereby authorized by the Texas Water Development Board to approve the 2006 Region L regional water plan on September 17, 2009. On August 14, 2009, TWDB received the 2006 Region L regional water plan amendment materials and the Region's request that the TWDB approve the 2006 Region L regional water plan, as amended. Staff has reviewed the amended regional water plan and finds that all requirements are met.

Interested persons are encouraged to attend the hearing and to present relevant and material comments concerning the proposed amendment. In addition, persons may provide written comments on or before December 10, 2009 to Matt Nelson, Water Resource Planning and Information, Texas Water Development Board, P.O. Box 13231, Capitol Station, Austin, Texas 78711 or by email to *matt.nelson@twdb.state.tx.us.* Copies of the proposed amendments are available for inspection at the Stephen F. Austin Building from the Water Resources Planning Division, Texas Water Development Board, 1700 North Congress Avenue, Austin, Texas 78701. If you want to view these documents, please call (512) 936-3550 for arrangements to view them. A copy of the proposed amendments will also be available on the Board's web site at http://www.twdb.state.tx.us.

The Board offers reasonable accommodations for persons attending meetings, hearings or educational events, as required by the Americans with Disabilities Act. If you require special accommodations, please contact Ms. Leslie Anderson, Public Information Officer, at (512) 463-7855.

TRD-200904910
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: October 28, 2009

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Public Hearing Notice for Hearing on Appeal of Groundwater Management Area 1 Desired Future Conditions

The Texas Water Development Board will hold a public hearing on petitions submitted under 31 TAC §356.44. The hearing will begin at 10:00 a.m. on November 11, 2009, at the offices of the Panhandle Regional Planning Commission, 415 W. Eighth Avenue, Amarillo, Texas.

Petitions on the reasonableness of the Desired Future Conditions adopted by the Groundwater Management Area 1 Groundwater Conservation Districts were submitted by G&J Ranch, Inc., and Mesa Water LP. The petitions are being consolidated for the hearing because of the nature of the claims and the evidence being presented.

Interested persons are encouraged to attend the hearing, which is not a contested case hearing. Petitioners and Respondents will each have 90 minutes in which to present their testimony. There will be no cross examination of those making presentations and no objections to the testimony or exhibits. Testimony and evidence presented should address the claims asserted in the petitions.

Other interested persons will have 10 business days from the close of the hearing in which to submit written evidence. No time will be allotted for public comment during the hearing. Written evidence may be submitted during the 10 day period to the Board's General Counsel, Texas Water Development Board, 1700 N. Congress Ave., P.O. Box 13231, Austin, Texas 78711-3231.

TRD-200904901
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: October 28, 2009

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Workforce Solutions Brazos Valley Board

Request for Proposal for Financial Monitoring Services

On November 2, 2009 Workforce Solutions Brazos Valley Board (WSBVB) will release a Request for Proposal (RFP) for Financial Monitoring Services for its programs in the following counties: Brazos, Burleson, Grimes, Leon, Madison, Robertson, and Washington. The Board is seeking a single contractor qualified and experienced in providing financial monitoring services. The complete scope of required services and the proposal requirements are contained in the Request for Proposal which may be viewed and downloaded at www.bvjobs.org.

Bidders may submit questions by email to dferrell@bvcog.org up until November 12, 2009. All questions and answers will be posted on www.bvjobs.org by November 16, 2009.

Due Date: An original and four (4) copies of a written proposal are due to the Board's offices no later than Tuesday, November 24, 2009 at 4:00 p.m. CST. Faxed or email proposals are not acceptable. Proposals received after the indicated due date and time regardless of delivery method will not be accepted or considered for award.

Proposals may be hand delivered to:

ATTENTION: FINANCIAL MONITORING SERVICES PROPOSAL

Darrek Ferrell, Program Specialist

Workforce Solutions Brazos Valley Board

3991 East 29th St.

Bryan, Texas 77802

Proposals may be mailed to:

ATTENTION: FINANCIAL MONITORING SERVICES PROPOSAL

Darrek Ferrell, Program Specialist

Workforce Solutions Brazos Valley Board

P.O. Drawer 4128

Bryan, Texas 77805

Proposals received after the deadline will not be considered. WSBV accepts no responsibility for late proposals.

TRD-200904872
Tom Wilkinson
Executive Director
Workforce Solutions Brazos Valley Board
Filed: October 27, 2009

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 34 (2009) is cited as follows: 34 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "34 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 34 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Index of Rules***. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with the ***Texas Register*** page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
40 TAC §3.704.....950 *(P)*

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).